PROPOSED PURCHASE OF MARATHON OIL CO. BY MOBIL OIL CORP.

JOINT HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

AND THE

COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

PROPOSED PURCHASE OF MARATHON OIL CO. BY MOBIL OIL CORP.

NOVEMBER 23, AND DECEMBER 14, 1981

Serial No. 97-96

(Senate Committee on Commerce, Science, and Transportation)

Serial No. 97-85

(House Committee on Energy and Commerce)

Printed for the use of the Committee on Commerce, Science, and Transportation, U.S. Senate, and the Committee on Energy and Commerce, House of Representatives

U.S. GOVERNMENT PRINTING OFFICE

90-214 O WASHINGTON: 1981

H361-50

S261-34

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CONTENTS

	Page
Opening statements by:	
Chairman Packwood	1
Chairman Dingell	4
Senator Schmitt	5
Senator Ford	6
Congressman Coats	7
Senator Cannon	8
Senator Gorton	9
Senator Danforth	10

CHRONOLOGICAL LIST OF WITNESSES

NOVEMBER 23, 1981

Barré, Charles H., director and vice president of refining, Marathon Oil Co., accompanied by Howard Harris, vice president of corporate external affairs; and Jack White, Washington representative	61
Prepared statement	73
Blum, Jack A., representing the Independent Gasoline Marketers Council; James F. Rill, representing the Ad Hoc Committee of Marathon Customers and the Society of Independent Gas Marketers of America; and Gregg R. Potvin, representing the Marketers Against Mergers	25
Prepared statements:	
Mr. Rill	27
Mr. Potvin	33
Mr. Blum	36
Brown, William J., attorney general, State of Ohio	12

DECEMBER 14, 1981

Opening statement by Chairman Dingell	77
Opening statement by Chairman Packwood	77
Baxter, William F., Assistant Attorney General, Antitrust Division, Department of Justice; Thomas Campbell, Director, Bureau of Competition, Federal Trade Commission; Walter Adams, distinguished university professor, economics department, Michigan State University; and Charles H. Barré, director and vice president of refining, Marathon Oil Co	78
Prepared statements:	
Mr. Baxter	81
Dr. Adams	90
Mr. Campbell	98
Mr. Barré	100

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Baxter, William F., Assistant Attorney General, Antitrust Division, Department of Justice, letter of February 5, 1982	141
Campbell, Thomas J., Director, Bureau of Competition, Federal Trade Commission, letters of:	
January 5, 1982	117
January 13, 1982	144
Columbus, R. Timothy, counsel, Ad Hoc Committee of Marathon Customers, letter of March 22, 1982	44

Page

Oxley, Michael G., U.S. Representative from Ohio, letter of November 23, 1981 148
White, John S., Marathon Oil Co., letter of March 24, 1982 73
Zielke, Duane, president, Eich Leyerle Oil Co., letter of November 19, 1981 34

PROPOSED PURCHASE OF MARATHON OIL CO. BY MOBIL OIL CORP.

MONDAY, NOVEMBER 23, 1981

U.S. SENATE, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION; AND HOUSE OF REPRESENTATIVES, COMMITTEE ON ENERGY AND COMMERCE,

Washington, D.C.

The committees met jointly at 9 a.m. in room 318 of the Russell Senate Office Building; Hon. Bob Packwood (chairman of the Senate Committee on Commerce, Science, and Transportation) presiding.

OPENING STATEMENT BY CHAIRMAN PACKWOOD

The CHAIRMAN.[1] The hearing will come to order, please. This morning we are here to receive testimony on what may be the biggest horizontal acquisition in our Nation's history. Mobil Corp., with more than 212,000 employees and total sales greater than $63 billion last year, has made a bid to purchase Marathon Oil, with its 15,000 employees and total sales in excess of $8 billion. A merger of this magnitude would create not only the largest oil company, but perhaps the largest industrial company of any kind, in the United States.

I am especially pleased to chair this hearing with my colleague John Dingell, the chairman of the House Energy and Commerce Committee. Our joint hearing reflects the importance of this proposed merger, as well as the depth of concern in both Houses of Congress.

The purpose of this hearing is straightforward. We are examining competition in the oil industry, as well as competition in the larger sense, in the operation of our antitrust laws. As we discuss these questions philosophically, there is also a historical perspective that has special irony.

I want to interject here and make it very clear that it is not the intent of this hearing to browbeat the Federal Trade Commission. Several years ago, allegedly——

Senator SCHMITT. What Federal Trade Commission?

The CHAIRMAN. The one that went out of commission last night.

Senator FORD. It wasn't my fault.

The CHAIRMAN. Several years ago a committee of Congress browbeat several Commissioners of the Federal Trade Commission in a case involving Pillsbury Co. The Federal Trade Commission acted

[1] Senator Packwood was the chairman throughout this day.

the way it thought the committee wanted it to act, it prohibited the merger. Pillsbury went to court, and the court ruled that the Commission had not acted independently, but had indeed bowed to the will and the desires of Congress, as expressed at the hearing.

Consequently, today, we have no intention of attempting to tell the Federal Trade Commission what conclusion it should reach.

It is unfortunate that the Chairman of the Federal Trade Commission left a message yesterday and called today to say that the Commission will not be here today.

Senator FORD. Who will not be here to testify?

The CHAIRMAN. The Federal Trade Commission will not be here to testify. Probably properly so, because you recall another court suit several years ago when we went through one of these continuing resolutions and the money ran out—a suit was brought specifically against the Federal Trade Commission, and they were ordered to do nothing but shut down their agency. They could do nothing else. All nonessential employees were not even to report for duty.

I shudder to think of the potential for the press when the word gets out there are many, many nonessential employees in all types of agencies that do not need to come into work today. I think the public's attitude will be, "Do they need to come to work at all, under any circumstances, under any conditions?" In any event, the Federal Trade Commission will not be here to testify today.

As to the argument that the merger is necessary, I am struck by the fact that 70 years ago, when we were dealing with Standard Oil of New Jersey, and again 4 or 5 years ago, when we were involved in the bills before the Congress on divestiture of the oil companies, the same argument was made. Many of the same arguments were made then about Standard Oil of New Jersey that are made now about major oil companies, or, for that matter, large businesses generally: If Standard Oil of New Jersey was broken up, it would stunt the growth of the oil industry; it would be bad for the economy of the United States, on and on and on.

Obviously, Standard Oil of New Jersey was broken up in 1911. Ironically, Mobil and Marathon are two progeny of that divestiture, and both of them have done quite well.

In the exercise of its legitimate legislative authority, Congess has the right and the responsibility to investigate public policy concerns such as this merger and determine the facts about these firms and the markets in which they operate. We must also understand the enforcement policies and review procedures applied by the relevant enforcement agencies. Ultimately, Congress must judge how adequately our present antitrust laws are to prevent undesirable mergers.

The Washington Post put it well in its editorial yesterday when they said: "You're watching one more episode of a profound change overtaking the economy in which you live and work. What, if anything, ought your government do about it?"

Since the proposed merger was announced, as you are aware, United States Steel has also entered the bidding to purchase Marathon Oil, and at this hour we are still in the dark as to the outcome of the bidding. Mobil has not revealed whether it will withdraw or remain an active bidder. In addition, if experience is any

judge, even if this proposed merger falls through, Mobil may well seek to purchase another oil company. As you are aware, they wanted to purchase Conoco earlier this year, and the same antitrust issues that relate to this particular case may relate to a future purchase.

I am very disappointed that Mobil chose not to appear here this morning. To the best of my knowledge, they did not go out of business last night at midnight, and they could have testified if they wanted to. They chose not to. I would look forward to hearing from them at perhaps another hearing.

[The statement follows:]

OPENING STATEMENT BY THE CHAIRMAN

This morning we are here to receive testimony on what may be the biggest horizontal acquisition in our nation's history. The Mobil Corporation, with more than 212,000 employees and total sales greater than $63 billion last year, has made a bid to purchase the Marathon Oil Company, with its 15,000 employees and total sales of $8.1 billion. A merger of this magnitude would create not only the largest oil company, but perhaps the largest industrial company of any kind in the United States.

I am especially pleased to chair his hearing with my colleague, John Dingell, Chairman of the House Energy and Commerce Committee. Our joint hearing reflects the importance of this proposed merger as well as the depth of concern in both Houses of Congress.

The purpose of this hearing is straightforward. We are examining competition in the oil industry as well as competition in the larger sense, and the operation of our antitrust laws. As we discuss these questions philosophically, there is also an historical perspective that has special irony.

Seventy years ago, the United States Supreme Court issued its landmark antitrust ruling in the Standard Oil of New Jersey case. From that monumental decision in 1911, both Mobil and Marathon were born. By virtue of its size and sheer dominance of the market, Standard Oil was found to have an anti-competitive grip over the nation's oil resources. As a matter of public policy, the Federal Government found it necessary to divest Standard Oil of its $860 million in corporate assets and to create instead 33 smaller oil companies. Far from crippling the oil industry, these companies eventually grew to become corporate giants.

We see that concentration is not a vestige of the past, however, but an increasingly common event in the market. The antitrust tools designed by Congress and entrusted to the Courts and regulatory agencies are in as much demand now as ever.

In the exercise of its legislative authority, Congress therefore has the right—and the responsibility—to investigate public policy concerns such as this merger and to determine the facts about these firms and the markets in which they operate. We must also understand the enforcement policies and the review procedures applied by the relevant enforcement agencies. Ultimately, Congress must judge how adequate our present antitrust laws are to prevent undesirable mergers. As the Washington Post put it directly on its editorial page yesterday, "You're watching one more episode of a profound change overtaking the economy in which you live and work. What—if anything—ought your government to be doing about it?"

At the same time, we are not here to dictate to the Federal Trade Commission, or other enforcement officials, how to apply the law in this or any other particular merger case. We can write the laws and shape public policy, but we cannot ourselves enforce the law in an individual case nor are we doing so today.

Before we begin, there are a couple of additional observations I should make about recent events in this case.

Since the proposed merger was announced, and Mobil's intentions made known, the U.S. Steel Corporation has also entered the bidding to purchase Marathon Oil. At this hour, we are still in the dark as to the outcome of the bidding. Mobil has not revealed yet whether it will withdraw or remain an active bidder.

In addition, if experience is any judge and if this proposed merger falls through, Mobil may well seek to purchase yet another oil company. These same antitrust issues may quickly arise again for Congress to examine. I particularly regret that the Mobil Corporation, although invited to appear here, has declined to testify. I had looked forward to hearing from them.

The CHAIRMAN. Chairman Dingell?

OPENING STATEMENT BY CHAIRMAN DINGELL

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy to us and the House. It is a privilege for us to join with you in this hearing inquiring into events relative to Mobil's attempt to take over Marathon and the number of antitrust questions of considerable importance to the Congress and to the people of the United States.

I want to say it is a privilege to sit with you. We in the House are very pleased that we could cooperate with our colleagues in the Senate to inquire into this matter. As you indicated, Mr. Chairman, this shows the great concern felt by the Congress, and I would reiterate to that it shows also the great concern that we in the House feel about this matter. In like fashion, Mr. Chairman, it enables us to move more speedily and expeditiously with one hearing, rather than two.

We regret that our friends from the Federal Trade Commission are precluded here by the unfortunate events of the weekend from joining us today to participate in this hearing, but we anticipate that we will hear from them as soon as the monetary affairs of the Nation are straightened out.

Mr. Chairman, in his book, "Other People's Money," Justice Louis Brandeis described how monopolists were using funds entrusted to them by the public for their own private gain. Today, the Nation sees the enormous profits that have been allowed to giant oil companies being used not to develop new oil and gas reserves, as has been intended by the Congress, or indeed have been promised by those who pushed for the special legislation and special relief and privilege that has been afforded them, but rather using these same funds to drill for oil on the floor of the stock exchanges.

Last week the Subcommittee on Oversight Investigations issued a staff report on oil company profits that bodes real concern for anyone who considers it. The report documents an alarming transfer of wealth that has occurred since the 1973 oil embargo. It is that wealth transfer and the problem of investing oil profits that has induced some major oil companies to embark on an aggressive campaign to swallow up former competitors.

That staff report also documents how the wealth transfer has severely impeded the rebuilding of plant and equipment by the rest of U.S. industry. The Standard Oil trust, as you have indicated, Mr. Chairman, was broken up in 1911.

It appears that one of the parties to that trust, Mobil, is now trying to reassemble the monopoly. But now we also see that the Justice Department is silent on the anticompetitive effects of the Mobil campaign of aggression against other oil companies. We see with regret that the administration endorses greater oil profits, elimination of windfall profit taxes, and does nothing to block the increasing market concentration in the oil industry. Marathon has been a significant competitor against the oil majors. It has sold nonbranded gasoline at lower prices to consumers and to other outlets when the majors refused to do so. It has created substantial numbers of jobs in the Midwest, when more and more the oil majors are expanding refining capacity overseas. Now, because of the Mobil plan of aggression, the future of Marathon as an independent is severely threatened.

We know that if Mobil is threatened in its undertakings here, and is thwarted in this instance, as it was in the Conoco case, it will simply look for other companies to prey upon. As a result, no matter what, one or others will be less independent than they are today—if Mobil has its way.

As a further sign of its arrogance, Mobil has declined to appear before this joint hearing, claiming that it is too busy with other matters. Those other matters we may only speculate upon.

The time is at hand for Congress to study the issues of wealth concentration, the economic and political powers of the major oil companies, and to develop solutions that insure competition and the distribution of profits fairly across all of the sectors of the U.S. economy instead of concentrating them only in one area. It is important to establish a breadth of investment in new plants and new equipment in all of the segments of American industry. That certainly does not occur when one oil company uses its cash to buy up another.

Mr. Chairman, it is an honor and a privilege to work with you this morning, and I look forward to our hearing and our cooperation with great pleasure.

The CHAIRMAN. Thank you, Mr. Chairman.

Mr. Schmitt?

OPENING STATEMENT BY SENATOR SCHMITT

Senator SCHMITT. Thank you, Mr. Chairman. It's a pleasure to be with you and with our colleagues from the House this morning.

Mr. Chairman, I have just completed in New Mexico an information survey, one of a series that I often run to help me understand better how to represent that great State. And in that survey, we continued to see overwhelming support for the President's attempts, and hopefully our attempts in cooperation with him, to control the rate of growth of Federal spending as one of the ways of controlling inflation.

However, Mr. Chairman, you might be interested to know that in a separate, somewhat more detailed question, we found that there is a very, very large—over 40 percent—feeling within the people surveyed that inflation is a result of price-fixing by major corporations. Whether that is true or not may not be as important to us in what we must do in our two committees as that the public, in significant proportion, believes it to be true. We have to take it into account in our deliberations, and we must either provide the public the information supporting this belief or provide them the information that doesn't support it. I hope that we can be objective on that issue.

In this case, one of the two things that are of great interest to me, and I hope of interest to the committees, is whether a takeover of this kind—it doesn't necessary have to be this one—results in significant upward pressure on prices, or retards the downward pressure that oversupply within the energy marketplace has created in recent times. Second, as a related matter, will a takeover of this kind seriously affect the credit market? Large amounts of credit are necessary, ordinarily, in these kinds of activities, and if it further results in a deficiency of credit for other purposes, then

it has an impact beyond the four corners of the agreement that might be signed in such a case.

So, Mr. Chairman, I compliment you and Chairman Dingell for joining together in this hearing. I think it will be extremely educational for me, and I believe to other members of our committees, and through the press and through our own activities, it may also be equally as important and educational for the people of our respective States and districts.

The CHAIRMAN. I might say to Chairman Dingell that the way we have run the Commerce Committee in the Senate is to let people speak in the order in which they arrive, regardless of seniority, and ask questions on that basis. I think if you don't mind, we will do the same thing here. Whoever comes in first gets to ask questions first; whoever comes in last gets to ask last.

Mr. DINGELL. That is eminently acceptable. We do it on the House side.

The CHAIRMAN. Next was Senator Ford.

OPENING STATEMENT BY SENATOR FORD

Senator FORD. Thank you, Mr. Chairman. I am glad to get back in business with Congressman Dingell.

It's been some time, John, since we have spent nights trying to figure out what's best for this country. I am glad to be here with you today, and my other colleagues, for this joint hearing.

The hearing today is of major importance, in my opinion, not only because of the merger activity surrounding Marathon Oil Co., but because of the precedent that this activity may establish. I am disturbed that this activity could signal a trend toward elimination of competition provided by American independent oil producers and refiners. In this particular case, my concern is intensified by the fact that unlike Mobil, Marathon sells its gasoline output to small, independent U.S. retailers who in some cases offer gasoline for less than service stations owned by the major oil companies, thus encouraging competition.

The circumstances have recently changed, due to United States Steel Corp.'s offer to acquire Marathon, which was announced last Thursday, but the need for a hearing, in my opinion, Mr. Chairman, on this issue is as important today as it was the day Mobil made its offer. This issue has arisen before with the Conoco merger, and will probably arise again. Of course, Mobil may sit down with its bankers, create more credit, and decide to offer more for Marathon than the approximately $125 a share United States Steel offered.

I want to make clear that I am not here to single out Mobil. We are here to discuss a much broader concern, in my opinion: the rigorous enforcement of our antitrust laws. I am very concerned, as several of my colleagues—particularly two of those on the majority side, who have been former Attorneys General—about how this administration is not making antitrust law enforcement a top priority, and I believe that the Federal Trade Commission would best serve the public interest by undertaking a thorough analysis of such proposed takeover.

I thank the chairman for the opportunity of making that statement.

The CHAIRMAN. We will call next on Congressman Coats.

Congressman, before you make your statement, I might announce to the press that quite a number of Members of Congress wanted to appear as witnesses today. Chairman Dingell and I decided, however, to limit this to people who have come from a fair distance. We will allow ample time for other hearings, if we need them, but there will be no congressional witnesses this morning.

Congressman Coats?

OPENING STATEMENT BY CONGRESSMAN COATS

Mr. COATS. Thank you, Mr. Chairman.

I think some serious questions need to be addressed today in a couple of respects. One has already been mentioned: antitrust, anticompetitive aspects of any such proposed merger, whether it's Mobil or some other oil company.

I think the entire question of how our major oil companies are going to utilize the profits that have been available to them under decontrol requires examination. I think there was an implied promise, an implied commitment made to Members of Congress that, when the President decontrolled crude oil a few months ago, the oil companies would act in a responsible way and utilize their profits to develop new resources of energy for this country, and not use those profits to acquire their competition.

I think others, in addition to this panel, have to look at and determine the anticompetitive aspects of it. But I might just mention a few facts regarding the anticompetitive effects of the takeover in Indiana.

In Indiana, Marathon Oil Co. is the second-largest gasoline marketer, with a 14.5 percent share of the total market for liquid petroleum products. If Mobil acquires Marathon, Mobil will become the largest oil marketer in the State of Indiana.

Marathon Oil currently has 626 retail outlets in Indiana, 450 of which are operated by independent businessmen; 100 independent jobbers and distributors serve agricultural, commercial, residential, and retail accounts throughout Indiana and throughout the Fourth Congressional District.

Marathon Oil Co. is the Nation's largest supplier to independent private-brand marketers, and historically has sold most of its gasoline to private-brand independent marketers. And I'm told this accounts for nearly 60 percent of all Marathon Oil Co. sales, and 30 percent of the sales in Indiana. These private-brand marketers are those that, in many instances, compete with Mobil and the other major brands, and have traditionally sold at prices under those of a major brand's outlets.

One other point. Marathon Oil Co. has a unique credit plan which services the agricultural and rural interests in Indiana very well. It allows our Indiana farmers to adjust their payments for purchase of gasoline and liquid petroleum products to fit their cash flow. Farmers are only required to pay every 6 months, and to pay interest of 10 percent on the unpaid balance.

Of the 2,700 farmers in Indiana, over 25 percent take advantage of this unique and creative credit plan. I have spoken with many of these farmers. I have spoken with many of the distributors in Indiana. They feel that the service they get, the orientation of Marathon to the Midwestern market, the sensitivity to the cash flow needs of farmers, and the uniqueness of their service all point to the fact that a merger between Marathon and a major oil company would seriously diminish their ability to enter into these types of arrangements.

For these and other reasons, I am looking forward to the hearing this morning, and to finding out just what the facts of such a proposed takeover are, and, as the other gentlemen have stated, to looking at the broader question of what our energy policy should be and what the responsibility of our major oil companies is, to serve the energy needs of this Nation.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cannon?

OPENING STATEMENT BY SENATOR CANNON

Senator CANNON. Thank you, Mr. Chairman.

Mobil Oil Corp.'s hostile attempt to gain approval for its proposed acquisition of Marathon Oil is of grave concern to me. Not too long ago, the Congress gave careful consideration to issues of importance to the oil industry and the country. At the time domestic oil prices were decontrolled and windfall profits for the industry were approved, Congress was assured that these actions were needed to promote finding more oil.

Now the oil industry is trying to tell us that new oil has indeed been found, but prospecting is not going on in the form of new reserve exploration. The prospecting activity is occurring on Wall Street, in the form of the takeover proposals for other existing oil company reserves.

The oil industry may not represent a concentrated market now, but should this merger occur, won't we find that a wave of such mergers will be triggered?

What if Exxon then buys Getty? Is that all right?

Then, is it all right if Texaco buys Cities Service?

Where do we draw the line before we have a concentrated market?

Has the consumer benefited from new discoveries resulting in increased oil supply? No. Then, what does the consumer get out of this plan? If he lives in an area where Mobil and Marathon compete, he may see the end of competition and the price and service benefits derived from it. Further, Marathon's disappearance as an independent supplier will mean the loss of a dependable supplier with its own crude resources.

I encourage the Federal Trade Commission to investigate thoroughly this merger activity, as well as any similar future proposals, to determine potential anticompetitive efforts.

I look forward today to the testimony in discussing this merger, as well as the offer by United States Steel to acquire 51 percent of Marathon's outstanding shares.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Danforth?

Senator DANFORTH. Mr. Chairman, could I just wait until some other Senators or Congresspeople have spoken?

The CHAIRMAN. Surely.

Senator Gorton?

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. Mr. Chairman, I have a statement which I will ask to be included in full in the record.

I would simply like to express, as I have on previous occasions, my additional concern—a concern which applies, for all practical purposes, as much to the proposed merger with United States Steel as it does with Mobil—about the impact of this series of mergers on the financial markets, and the tying up of credit, which, in my view, should be available for internal expansion by both the companies which are seeking mergers and those which are attempting to fend them off.

Although it is rather narrowly focused, this morning's hearing is another step in a remarkable continuing process of dialogue involving the Congress and the Administration concerning enforcement of the antitrust laws. This process began when the chief spokesmen of the Administration made broad statements about their philosophies of antitrust enforcement which alarmed many of us in the Congress. We were alarmed because these statements seemed to indicate that those charged with federal enforcement of the antitrust laws were philosophically opposed to some of those laws, and that they intended to change these laws, in effect, by an announced policy of selective enforcement. One of the areas of this concern is section 7 of the Clayton Act, involving mergers and acquisitions—the underlying subject of this hearing. The statements of Mr. Baxter and Dr. Miller in this area were reported to have sent sharp signals to the business community that some mergers which were previously clearly forbidden, are now worth a try. A wave of merger activity predictably appears to be the result.

The reaction of the Congress has been swift and singularly unanimous. There is widespread bipartisan agreement that vigorous enforcement of all the antitrust laws is essential to restoration of the health of our economy, especially during the present commitment to deregulation. Any significant changes in these laws must be made only with the consent of the Congress.

The resolve of Congress on these points is now beyond serious doubt. Strong public statements have been made by Senators and Congressmen covering the entire spectrum of political, social and economic philosophy. Amendments to appropriations and authorization bills expressing this viewpoint have passed without dissent. Legislative proposals which would go the extremes of creating a presumption of illegality against some mergers—or even a moratorium on some mergers—are circulating. This is but one in a continuing series of hearings before many Congressional committees. Next week, the Subcommittee on Productivity and Competition of the Senate Small Business Committee, which I chair, will hear testimony on the effects of the Administration's approach on small businesses.

This message from the Congress appears to be getting through. I am very encouraged that a serious consultation process appears to have begun. The Administration has clarified its position on a few points—but, more importantly, Mr. Baxter and Dr. Miller have shown a willingness to continue to work closely with the Congress on these questions. I hope that this hearing can be another constructive step in this process.

The CHAIRMAN. Senator Kassebaum?

Senator KASSEBAUM. I have no opening statement, Mr. Chairman.

I am here, like the rest of us, because of concern about the mergers that have occurred and those that might still occur, and their effect on the economy. And I am looking forward to the testimony this morning.

The CHAIRMAN. Senator Danforth?

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. Mr. Chairman, I would like to just raise the issue of what these hearings are for, and what I understand they are not for.

On November 10, you and Senator Ford and I wrote a letter to FTC Chairman Miller, asking that the FTC conduct a thorough investigation of the proposed acquisition of Marathon by Mobil. We took the view that the FTC should at least look at the matter; that we expect the FTC to apply the law; that the FTC does, in fact, have antitrust jurisdiction; and that we in the Congress expect the FTC to utilize that jurisdiction.

During the time of the Reagan administration, the question has been raised as to whether or not the FTC should have, or will continue to utilize, its antitrust jurisdiction. A number of us—I know Senator Gorton, in particular, and I—have expressed concern that the FTC will somehow abandon its longstanding jurisdiction in antitrust matters, and we raised that question when Jim Miller was before the Commerce Committee during his confirmation hearings.

It was my understanding of his position at that time that while the question of whether or not the FTC should have antitrust jurisdiction should, of course, be a matter for review, unless and until the Congress removes that jurisdiction, the FTC will continue to apply the antitrust laws, as part of its duties.

Now, Mr. Chairman, here is what concerns me. I think that it's fine for the Congress to say to the FTC, "You have antitrust jurisdiction; until you hear from us, do your job." But I think that it's quite another thing for us to tell them in a live case, in a specific case, precisely how they should do their job.

I am concerned that Congress might be viewed as adopting what could be called the George Steinbrenner method of management of the FTC, and that the view would be taken that we are telling the FTC in effect, through these hearings, that they must reach a particular conclusion with respect to a particular case. And I think that that would be a mistake.

Clearly, if the thrust of this hearing would be that Congress would say to the FTC, "Lay off Mobil," that would be a matter of

great public comment. Every editorial writer in the country would be criticizing us, and justly so, for meddling in the internal workings of the Federal Trade Commission.

I would say that there is no real difference in principal between Congress, in effect, saying to the Federal Trade Commission, "Lay off Mobil," and Congress saying to the Federal Trade Commission, "Enjoin this particular acquisition." And therefore, it seems to me that what we do not want to do is to give the signal that we are coming down on one side or another on a particular live controversy now before the Federal Trade Commission.

We simply expect the Commission to do its job, as it applies the law. We don't expect to tell it to apply the law on one side or another in a particular controversy. If the antitrust laws or the Federal Trade Commission Act are in some way defective, we would, of course, expect to be notified in that regard.

But it seems to me that our basic oversight responsibility with respect to this agency is to find out whether or not they are applying the law that Congress passed, and not to put the pressure on them one way or another with respect to the specific controversy.

The CHAIRMAN. Congressman Scheuer?

Mr. SCHEUER. No comment, Mr. Chairman.

The CHAIRMAN. Jack, let me emphasize once more, for those who were not here earlier, it is not the intention of this hearing to direct the Federal Trade Commission to reach a particular conclusion. Indeed, if we did that, we would risk what we suffered in the *Pillsbury* case, where a court held that we had so directed the Federal Trade Commission to reach a conclusion, the FTC's order must be nullified.

The Federal Trade Commission will not be here because, in theory, it's in the process of shutting down its operation——

Senator FORD. Nonessential operations.

The CHAIRMAN. That's right.

Third, Mobil cannot be here, and I'm very disappointed about that. They have 212,000 employees, one of whom might be able to appear and properly represent the company; but they are too busy, they are too otherwise occupied, or whatever.

Senator FORD. Maybe they're shutting down their nonessential services today.

The CHAIRMAN. And fourth, while I'm not directing or asking the FTC to reach a conclusion, I don't want to leave an impression that I have no feelings about this particular merger. In 1974, 1975, and 1976 I supported efforts for divestiture of the oil companies; and if I thought we had the votes, I would support that again.

I do not think this merger is wise. I personally hope it doesn't go through, but that is not to be taken as a directive to the Federal Trade Commission.

If we could legislatively prohibit it, and we had the votes, I would. If we could legislatively direct divestiture of the oil companies horizontally and vertically, I would support that. The votes are not in this Congress to achieve it. Apparently the bill would be vetoed if we passed it.

Other opening comments?

Congressman Scheuer?

Mr. SCHEUER. Can I ask if anyone is going to enlighten us on what the effect of the United States Steel friendly takeover opt is on this entire question, and particularly what the impact of that would be on the degree of competition still remaining in the industry?

The CHAIRMAN. We have a panel of witnesses, all of whom are versed in the marketing of gasoline, and we also have a witness from Marathon, who I assume can enlighten us on that subject.

Mr. SCHEUER. Will there be any witnesses from United States Steel?

The CHAIRMAN. No.

Mr. SCHEUER. Thank you.

The CHAIRMAN. We'll start this morning with testimony from Hon. William J. Brown, the Attorney General from the State of Ohio. Welcome.

You're very patient to listen to all of our opening statements.

STATEMENT OF WILLIAM J. BROWN, ATTORNEY GENERAL, STATE OF OHIO

Mr. BROWN. Thank you, Mr. Chairman. Mr. Chairman and members of the committees. Thank you for the opportunity to address these committees today. I certainly appreciate your concerns in calling for testimony and your interest in what would be the largest horizontal corporate takeover in the history of this country.

The proposed forced merger of Marathon with Mobil Oil Corp., will certainly be the largest ever between two fully integrated oil companies. I share the view of many who think that this unwelcome takeover by Mobil could well set off a domino effect whereby many midsized oil companies are eliminated by large international energy giants.

I see nothing to be gained and everything to lose by this takeover of a healthy and prosperous Ohio company. As Attorney General for the State of Ohio, I see serious and troublesome consequences for consumers, farmers, and businessmen in my State, if Mobil happens to be successful. The adverse impact this takeover will have on the citizens of Ohio led me to file suit 10 days ago against Mobil Oil Corp., and its agent and brokerage firm Merrill Lynch. The suit, which was filed in Franklin County Common Pleas Court, was brought on behalf of the State and its citizens who will see gasoline prices increase at the pumps if this forced merger is permitted.

At this time, I'd like to give you some information on gasoline sales in Ohio, which I think will clearly demonstrate why this takeover will drive up prices.

The Marathon Oil Co. sells 80 percent of its gasoline in Ohio to independent gas dealers and company-owned economy stations like Bonded, Gastown, Speedway, and Checker. This makes Marathon the largest supply of low-priced gasoline in Ohio, providing nearly one-third of all economy and off-brand gasoline sold in the State.

By contrast, Mobil sells virtually all of its gas to its own branded outlets and has long maintained a policy of not selling gasoline to independent dealers. Instead, Mobil has elected to sell nearly all of its gas under its higher priced brand name. In Ohio, the per gallon

difference between major and economy brands generally runs from 3 to 7 cents. This 3- to 7-cent difference is certainly significant.

For every penny increase in the cost of gasoline, the Ohio consumers will pay $50 million more a year. I think that's too high a price to pay.

Off-brand gasoline serves as an important check against the major oil companies and as an attractive alternative to Ohio drivers. The future of low-priced discount gasoline will be put in jeopardy if Marathon, which is an aggressive supplier of economy gas in Ohio, happens to disappear.

Without Marathon competing in the market, up to one-third of the price competition from discount stations will be eliminated. The disappearance of Marathon would increase the concentration of oil companies in an already concentrated Ohio gasoline market. Furthermore, it would make it even more difficult for other oil companies to enter and compete in Ohio. Certainly, none of this works in favor of the Ohio consumer. I think we all remember the days of the gas price wars and how they worked to give consumers a bargain. But if Mobil succeeds in acquiring Marathon, 40 percent of the gasoline sales in this State will be controlled by two companies, Sohio, which is Standard Oil of Ohio, and Mobil. When two companies control that much of the market and a major competitor is eliminated, there can be no healthy competition. The market forces that are supposed to work in a free enterprise system to provide better products and service at lower price, instead will be suppressed, to the disadvantage of consumers who have already suffered under high gasoline prices.

Now consumers are not the only ones who will suffer from the burden of less competition. The proposed Mobil takeover will also have an adverse effect on the Ohio farm community, since Marathon is a major supplier of gasoline and diesel fuel to Ohio farmers. In 1981, Ohio's agricultural industry will require 185 million gallons of gasoline and 179 million gallons of diesel fuel. Four companies: Marathon, Landmark, Sohio and Ashland are the major suppliers of gasoline and diesel fuel to Ohio farmers. While Mobil has no significant history in Ohio or elsewhere of serving the agricultural community, Marathon markets not only under its own brand name but supplies the bulk of fuel to Landmark. Only two companies would remain to service the farm market if the takeover is successful, and inevitably competition and supply would decrease.

Another point I would like to make concerns the social and economic consequences if Mobil succeeds with this takeover. Marathon Oil is Ohio's fifth largest corporation in sales and assets, which is based in Findley, Ohio, a town of about 35,000 people. The loss of Marathon through an anticompetitive merger would be a tremendous blow to the city of Findley, to Hancock County, and the State of Ohio.

Marathon's three large buildings on Main Street in downtown Findley, generate $455,000 in property tax a year and another $760,000 is paid to the city in income taxes. Marathon employees will pay $1.2 million in taxes to Findley and other nearby communities. In addition to local taxes, Marathon Corp. pays $9 million yearly to the State in corporate taxes and it's employees add another $1.8 million annually in personal income tax. All together,

the Marathon Corp. pays $14 million to State and local governments and its 2100 employees add another $3 million annually.

Ohio is already facing a severe financial drain and the loss of these revenues would only add to the State's worsening economic picture. We currently have the second highest unemployment rate in the Nation with 1 out of every 10 of our workers unemployed. During this time of unemployment and financial strain I don't think we can sit passively by and watch an oil giant gobble up one of its most vigorous competitors.

In filing suit in State court to stop this unwelcome takeover, I have asked the judge to find the Mobil Oil Corp. in violation of Ohio's antitrust laws. I have asked the court to prohibit Mobil from acquiring Marathon stock, making a tender offer to Marathon stockholders, voting any shares of Marathon stock, influencing the management of Marathon Oil and taking any other steps to acquire control of Marathon.

I have heard some criticisms of this suit. Mainly those critics say that State courts cannot rule on an interstate merger of this magnitude and that the antitrust laws are best decided in Federal court by a Federal judge.

Let me answer those critics by saying that Ohio does not have to stand by helplessly while an anticompetitive merger takes shape. In 1892, the Ohio Attorney General won a landmark decision in the Ohio Supreme Court against the Standard Oil trust, 20 years before the Federal Government won its case in the U.S. Supreme Court. Ohio did not stand by helplessly then and should not stand by helplessly today.

We have our own antitrust law, the Valentine Act which was enacted to protect the citizens of Ohio from the ill effects of a loss of competition. We have our right to a day in court.

In addition, I should point out that the Valentine Act is fully consistent with Federal antitrust laws. Those laws prohibit anticompetitive mergers, not only nationwide, but in any relevant local area. It is unrealistic to focus attention only on the national gasoline market. Since Ohio citizens can't drive to Indiana, Michigan, or Kentucky to buy gas, they have no alternative but to buy where they live. So the Ohio market, and competition within that market, becomes very critical.

While a Mobil-Marathon combination would produce the Nation's largest gasoline retailer, it would then only have control of about 8.1 percent of the U.S. market. But in Ohio, control would jump to 16 percent.

In addition, Marathon's competitive importance is magnified when you take into account that Marathon is one of the few fully integrated oil companies supplying and retailing discount gasoline.

The gasoline market cannot be examined only on a national scale. Individual regions must be taken into account. The State of Ohio is certainly an important market and consumers in the State will feel the impact much more severely than those in other regions of the country. So I feel Ohio's antitrust action is critical, and I might add that during a time when the regulatory emphasis is shifting back to the States from the Federal Government, it would be unpardonable for Ohio not to take legal action.

As part of our Federal system, the courts have held that a State can act against restraints in interstate commerce, when such commerce has significant local consequences. Here the consequences to Ohio are undeniably significant.

As the Ohio Attorney General, I think the Mobil-Marathon takeover would deprive the people of my State of a competitive gasoline market.

Thank you. I will be happy to answer any questions.

The CHAIRMAN. I think we'll follow the rule during this hearing of asking questions in the order in which we arrived at the hearing, limiting ourselves on the first round to 5 minutes of questions. We'll go around as many rounds as necessary. There's a fair number of Members of Congress here, and we want to give them all a chance.

Mr. Attorney General, you were satisfied that as far as you look at this case, let alone the FTC, you can consider a State as a market, or even a section smaller than a State as a market?

Mr. BROWN. Yes.

The CHAIRMAN. You've got a good history in Ohio. I was intrigued with the fact that Ohio had filed an antitrust suit against Standard Oil years before the Federal Government. If you have the power to do that, and if your Valentine Act is similar, or substantially similar to our Clayton Act, is there a need also for the Federal Government to act if you can accomplish what you need to in your State?

Mr. BROWN. I think we will be successful with the Valentine Act through State enforcement, as we were successful in 1892. The unfortunate part about the Valentine Act is that it isn't a national act, and thus, even though the merger may be prevented in Ohio, it wouldn't apply to any of the other 49 States and besides, it's always good if you can possibly have it, to have a case in the Federal court that would correspond with the Ohio court. It's like having two swings at the ball.

The CHAIRMAN. Chairman Dingell?

Mr. DINGELL. Mr. Chairman, thank you. Mr. Chairman, I'd like to amplify on the question which you have just asked, and that is you have indicated the antitrust impacts and your concern and your rather excellent Ohio statute. You have indicated, I think, that it would be well to have this matter decided on the national level because of the problems you set forth.

In your view as attorney general, don't you believe that there is a strong chance that the situation before us with regard to Mobil and Marathon constitutes a potential violation of Federal antitrust laws as well?

Mr. BROWN. That case is going through final argument today. I doubt that it would be good for me to comment on how a judge may rule.

Mr. DINGELL. I'm not asking that. I'm just asking a private question. I have some strong feelings on this matter. I'd like to have your feelings as well. I never second-guess courts.

Mr. BROWN. I think the court will probably restrain Mobil from this takeover. I feel certain that the Ohio court will restrain Mobil from the takeover. There are two separate issues: One is a national issue, dealing with crude and pipelines; then there is the local issue

which is, of course, I think, the real issue, the selling of gasoline at the pump. And I don't think that we want to lose sight of that's where the competition is, where you drive and where you can buy gasoline. If you can only buy it from one company, obviously prices are going to go any way that the board of directors would so want them to go.

Mr. DINGELL. Now you discussed this on the basis of a case of Mobil and of Marathon, which indicates to me here that we here in the Congress on the Federal level, are dealing with these questions on a case-by-case basis. Do you believe that the questions are of sufficient concern with regard to takeover and potential takeover of midsize companies in the energy business and out by the international energy giants; that perhaps the Congress or the Nation should deal with this through some kind of a broad, comprehensive approach as opposed to a case-by-case basis?

Mr. BROWN. The antitrust mechanism is intact. It will work. As to whether we should have another law which would prevent further corporate takeovers of what we have presently in Ohio right now, if we do it in the oil business are we going to do it in the steel business? If we do it in the steel business, are we going to do it in the plastics business? I'm not so sure that a Federal law, geared toward one industry, when we have——

Mr. DINGELL. I am suggesting a broad approach dealing with this question better. I believe the antitrust laws afford us some rather broad ability to deal with the questions, particularly where matters are addressed by the Federal Trade Commission as opposed to the Department of Justice, under the rather broader responsibilities of the FTC.

Mr. BROWN. I didn't hear what——

Mr. DINGELL. I'm sorry. Apparently I found a room where the acoustics are worse than the Commerce Committee, the hearing room on the House side.

I didn't deal with the question of enactment of new statutes; rather, with the question of a broad approach by the Federal Government to this question of takeover involving takeovers of small- and medium-sized corporations by the international energy giants; that is, companies both in and outside of the energy business. I don't suggest that we ought to go into the question of steel companies taking over or plastics or other companies taking over. At this particular moment, all the capital seems to lie in the hands of the oil companies.

Mr. BROWN. I would think it would be a very good exercise for Congress, since it seems that the conglomerate—in the conglomerate arena there has been much litigation in the Federal courts. Obviously, by that litigation, we have many more conglomerates that are beginning to swallow up conglomerates. So, therefore, I'm not sure that the antitrust mechanism will work there and the laws that we presently have do not seem to prevent more conglomerates. Thus, I think it would be good for Congress to look into that.

Mr. DINGELL. Mr. Attorney General, thank you.

Mr. Chairman, just one brief comment. We on the House side are almost as sensitive to the *Pillsbury* decision, as are you on the Senate side since this event occurred on the Senate side more than on the House side. And I just want it clear on the record that we

on the House side, and the increase which we have made, have been directed not as procuring a specific response from the Federal Trade Commission or from any Federal agency; simply to inquire as to whether or not the Federal Trade Commission is properly carrying out its appointed responsibilities under the law and to make very, very sure that questions which should be inquired into are, in fact, being inquired into.

Speaking for the House side, I view our actions as being proper legislative oversight actions directed at informing the Congress, seeing to it that the laws are being faithfully implemented and carried out, but not in seeing to it that the Federal Trade Commission achieves any particular response to any inquiry by the House or by the Congress with regard to this particular matter other than to see to it that they are approaching the matter and inquiring into the questions, of course, with all due diligence. Thank you.

The CHAIRMAN. Well said. Congressman Coats?

Mr. COATS. Thank you, Mr. Chairman. I will reserve any questions I have for later witnesses.

The CHAIRMAN. Senator Cannon?

Senator CANNON. Thank you, Mr. Chairman. General, how significant do you think the fact is that Marathon's complaint lists six States in which the combined Mobil-Marathon share of gas sales ranges from 12 to 20 percent?

Mr. BROWN. In Ohio it would be 16 percent. It would be the second largest seller of gasoline in our State, if this merger were permitted to go forward. As to the other five States, I'm just not that familiar with them.

Senator CANNON. Would you agree that with respect to a horizontal acquisition, the potential restriction of supplies and/or the increase of price for the consumers should be of paramount consideration to the Federal Trade Commission?

Mr. BROWN. Without a doubt. Without a doubt.

Senator CANNON. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Danforth?

Senator DANFORTH. It's my understanding that your answer to Congressman Dingell's question was that you think that the present law is adequate, and that you do not believe that further statutes are required on the part of the Congress to deal with acquisitions by the oil companies?

Mr. BROWN. The antitrust arena, in the arena of antitrust. Now, as far as mergers and takeovers, it may be outside of the antitrust arena where we arrive at huge conglomerates which are very difficult to control. There I think we are a little shy.

Senator DANFORTH. So you believe that we should consider legislation beyond the present antitrust laws?

Mr. BROWN. Yes.

Senator DANFORTH. Dealing with acquisitions?

Mr. BROWN. Look at United States Steel. They were just here this summer saying we need this and that from the Congress so that we can refurbish our plants, so that we can have new machinery, so that we can produce cheaper than the Japanese and the Germans. And they're turning right around and they're going to buy Marathon for $6 billion. You know, that builds a lot of steel plants.

Senator DANFORTH. Do you have any idea of what form that legislation should take?

Mr. BROWN. No. I'd certainly be happy to consult with your staff if you would like to look at something like that.

Senator DANFORTH. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Gorton?

Senator GORTON. Bill, I should like to welcome you here and report to my fellow committee members the high quality of antitrust law enforcement in the State of Ohio under your stewardship. We worked together on a number of cases while I was attorney general of Washington, and this latest lawsuit is simply an example of the way in which the laws have been enforced in the State of Ohio.

I should like, however, to follow up on the questions of Senator Danforth, to begin by asking for your comments on what is now the live merger proposal between Marathon and United States Steel, as opposed to the one which seems unlikely to take place. You have illustrated in your formal testimony the impact on the State of Ohio of the Mobil-Marathon merger. What is your view of the impact on the State of Ohio of the United States Steel-Marathon merger, and do you have any intention of bringing a lawsuit to enjoin that merger?

Mr. BROWN. We are presently researching as to whether there would be any violation of antitrust law in the State of Ohio with the United States Steel-Marathon merger. As to whether that is going to go forward or not, it's very difficult to tell. From what we can read in the newspapers, just today the Wall Street Journal was saying that Gulf Oil may now be entering the fray. So we not only have Mobil, but we now have Gulf. And then Gulf announced that if it doesn't buy Marathon, it may buy Pennzoil, while at the same time we have another conglomerate who was getting into the energy business and seemingly getting out of the steel business.

Here again, it would seem to be that this is certainly fertile ground for Congress to look into.

Senator GORTON. Taken in the abstract, at least, I gather you find the proposed merger between United States Steel and Marathon to be undesirable?

Mr. BROWN. I was born in the Mahoning Valley where we have just shut down virtually every basic steel plant because they didn't want to put the money into the necessary modern equipment so that we could compete with foreign steel.

I was just reading last night H.R. 3520 by which Congress has extended the enforcement of the Air Quality Act and other environmental standards for steel plants, so that they could get enough capital to reinvest it into their steel plants. While we're laying off people in Youngstown, Ohio, there is $6 billion being spent for an oil company. That doesn't make a lot of sense to me.

Senator GORTON. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Kassebaum?

Senator KASSEBAUM. I would gather, then, Mr. Attorney General, from your answer to both Senator Danforth and Senator Gorton, that you feel the tax legislation which we enacted last summer with the intent of giving breaks for capital investment formation, is perhaps working to our detriment, and that in this particular in-

stance regarding United States Steel, investment moneys are not going in the intended direction.

Mr. BROWN. $6 billion for an oil company. That means that that's $6 billion that's going to be out of the credit money market, No 1. No. 2, that means there's going to be $6 billion less spent on the basic process of making steel in this country. Ohio happens to be a large steel producer, and we're laying off people in the Mahoning Valley where United States Steel had works that have been closed for want of capital to invest in a plant to make it more efficient so they can compete. And 6 months later, after H.R. 3520 was passed, they are over buying an oil company.

Senator KASSEBAUM. You would not like to see anyone take over Marathon?

Mr. BROWN. Marathon is a very good citizen of Ohio, made $360 million in profit last year, does very well with a well managed company. It's got good reserves. It's got its own logistical system. It's got its own way to get the gas to the people, and it does it in such a way that it's good competition because 80 percent of the gas they sell goes for discount gasoline which puts a check on the major oil companies. Right now we have an oil company ready to buy them out.

Senator KASSEBAUM. Do you see that being lost, for instance, if United States Steel would take over Marathon?

Mr. BROWN. I was in Findley, I believe it was Tuesday or Wednesday, when the United States Steel offer was told to the press and to the people, and the rally there—and then reading the press reports and then talking to some people about it, United States Steel has committed that they would keep Marathon Oil Co. in place as it is right now. I don't know as to whether those commitments are enforceable in a court of law. It would seem that it would be something where the company's honor would be at stake, but as to whether they would actually keep it there, whether they would keep Marathon as an Ohio corporation, i something that they're going to put down on paper and I certainly wouldn't want to be the lawyer litigating the other side of that issue, if they happen to have violated their trust.

We were discussing this on the way down in the plane. What happens if United States Steel buys Marathon, makes all these commitments to the community, to Marathon Corp., and then decides to renege? What's the remedy? It's a very interesting legal question. I don't have the answer to it.

Senator KASSEBAUM. Thank you.

The CHAIRMAN. Congressman Scheuer?

Mr. SCHEUER. Thank you, Mr. Chairman.

Mr. Attorney General, you have told us that Marathon provides discount prices at the gas pump and that this is a check on the major oil companies. Do you have any structural analysis of the industry that would let us know what would be the effect of these discount prices at the gas pump of the proposed merger, what effect that would have on the ability of the independent gas retailers who provide these discount prices at the pump to buy their gas supplies at more or less the competitive prices that prevail today? How would that be changed and how would that impact the consumer when he pulls up to that gas pump?

Mr. BROWN. Mobil Oil does not have very much of a track record as far as supplying either discount gas or to independents. They do not supply independents whatsoever. They haven't had a history of that, and they don't seem to have a corporate philosophy of that. They sell at retail rates. If this merger were permitted, it would seem to me that the independents would have to seek their gasoline supplies elsewhere, and it would seem that discount gas in the State of Ohio, at least one-third of it would go out of business.

Mr. SCHEUER. Do you have any evidence of that, or any study?

Mr. BROWN. The only way you can determine what's going to happen in the future is look at the past, and Mobil Oil does not have a history of supplying discount gasoline, No. 1; No. 2, does not sell to independents. Cats don't bark.

Mr. SCHEUER. Where would the independents, then, find their supply?

Mr. BROWN. They would have to go elsewhere, which, of course, then, would drive up the cost of that gasoline, because there would be more people, more corporations attempting to buy that limited supply of low priced economy gasoline.

Mr. SCHEUER. What other sources are there? Where is elsewhere?

Mr. BROWN. There are several sources. They're just mostly independents. It would be very difficult, if Marathon got out of the independent business—it would be very difficult for many independents to survive.

Mr. SCHEUER. And what would you like to see the Federal Trade Commission doing? What kind of a process would you like to see unfolding, apart from new law?

Mr. BROWN. The Federal Trade Commission has to proceed under the requirements of the Federal antitrust laws. The Federal Trade Commission should, as quickly as possible, review the documents requested of Mobil Oil Corp. and determine whether the proposed Mobil-Marathon merger violates the Federal antitrust laws. As a practical matter, however, the courts may decide the antitrust issues before the Federal Trade Commission can act. If the Federal court finds and issues an order against Mobil, and if the Sixth Circuit Court of Appeals does not give them a stay on that order, then I think the case is over. If, at the same time, the Ohio court decides to grant an injunction, and if the court of appeals will not permit a stay on that injunction, then the case is over.

So the the present time, we have two courts, and then we also have, by the way—which is not the subject of this hearing—the Ohio takeover statute.

Mr. SCHEUER. Let me interrupt you, because my time is fleeting. Two questions, and they will be my last questions.

What would you like to see the Federal Trade Commission do in the absence—as the distinguished chairman of the Senate committee observed—in the absence of any reasonable likelihood that we can get law passed that would be signed by the President?

In that de facto environment, what would you like to see the Federal Trade Commission doing. And, what would you like to see the Congress doing, apart from passing legislation?

Mr. BROWN. The Federal Trade Commission must examine the doucments and decide whether the merger violates the Federal antitrust laws.

Mr. SCHEUER. I thank you, Mr. Chairman.

The CHAIRMAN. Congressman Sharp, and then we will go back to Senator Schmitt.

Mr. SHARP. Thank you, Mr. Chairman. I appreciate the witness' comments.

Let me ask you, are you saying you would recommend the FTC and the Congress as well wait until after the December 9 date, because we might cause that to become a factor in the court's decision in deciding to do nothing?

Mr. BROWN. Well, I am not insisting that you wait.

However, the Federal Trade Commission is required by Federal Law to move ahead with its examination of the merger and make a decision. If the Federal trade Commission concludes that the merger violates Federal antitrust law, I think the Federal Trade Commission ought to intervene in those lawsuits with both feet.

Mr. SHARP. I guess I am asking, though, if it is clear the FTC is moving and/or that Congress is moving, is there a risk that the court will use that as the reason for no decision, or no stay?

Mr. BROWN. No, I don't think so.

Mr. SHARP. Thank you, Mr. Chairman. I appreciate it.

The CHAIRMAN. Senator Schmitt.

Senator SCHMITT. I will pass right now.

The CHAIRMAN. For a second round, Chairman Dingell?

Mr. DINGELL. Thank you, Mr. Chairman. No questions.

The CHAIRMAN. Congressman Coats.

Mr. COATS. Yes, just one, Mr. Chairman. The question was raised earlier about the United States Steel purchase and the implications of that to United States Steel. Without my coming down on one side or the other of that, I would like to ask you a question.

Isn't it conceivable that United States Steel would be looking at Marathon as a, shall we say, revenue-enhancing asset that would allow it to be more competitive in the future? Or at least allow it to improve its debt position, or credit position, to borrow funds at lower rates to stay in the steel business? I haven't received any indication that United States Steel is interested in going out of the steel business—but that they are searching for ways to become more profitable and to generate the cash necessary to be competitive on a worldwide market. Isn't that also a likely scenario?

Mr. BROWN. Yes, it is. They're going to pay $800 million interest on the money that they are going to borrow. Now, Marathon is going to make about $360 million this year, so you couple the $800 million—factored out, it's going to take them several years just to pay the interest on the money they borrowed. Now, when you're going out on the market borrowing $3 billion, that also puts your credit position in such a way that you can't go out and borrow too much more.

Mr. COATS. That would depend on the value of the asset that you acquired and how the financial markets viewed the stability or the ability of that asset to enhance your revenue position—your credit position.

Mr. BROWN. I am at a loss why United States Steel would want this company, with the exception of diversification, wanting to get into other businesses. I believe they're in the coal business. Now they want to get into the oil business. Marathon is a splendid buy

for United States Steel, and I certainly can't fault United States Steel for their intentions.

But, at the same time, we have lost a number—thousands of jobs in the steel business, because of the lack of money for reinvestment into the aging steel plants in the Ohio Valley. I am at a loss why they would not want to redouble their efforts to purchase new machinery and less oil.

Mr. COATS. You, as Attorney General for the State of Ohio, can file suit similar to one currently pending today, to enjoin the purchase of Marathon by United States Steel.

Mr. BROWN. We are presently researching. I am not so sure that there is a violation of Ohio law, since we do not have an oil company purchasing an oil company. We have a steel conglomerate purchasing an oil company, which would not seem—at least on its face—to interrupt competition. And if there is not an interruption in competition, there is no antitrust—there is no antitrust implication, No. 1. No. 2, the Ohio takeover statute would not apply, since this is a friendly takeover.

Mr. COATS. I think my time has expired. Thank you, Mr. Chairman.

Mr. SCHEUER. Thank you, Mr. Chairman.

The CHAIRMAN. We're going in the order of arrival. Senator Cannon next.

Senator CANNON. Thank you, Mr. Chairman.

You indicated that you don't have any idea why United States Steel is trying to get involved in this takeover, because of the costs of money compared to the profits. What about the Mobil-Marathon takeover? What do you think the objective of Mobil would be there—because wouldn't they have the same very high cost of money involved, which would be actually more than Marathon's interest?

Mr. BROWN. I think they have more, Senator. I think the object of the Mobil takeover is reserves. The reserves in the Brae Field which is the field north of England and the Yates Field down in Texas, which is a very good field. I think Mobil was looking for high-quality reserves of which Marathon does have. And here again, Mobil was not here to testify. I am not sure that they were looking at the final distribution point as being part of what they are desiring. They are actually looking for the reserves that Marathon has. It has some of the highest reserves of any oil company in the Nation.

Senator CANNON. So instead of going out and developing reserves, as I think I mentioned earlier, it's easier to go to the stock market and acquire the reserves on the stock market in that fashion, rather than try to develop them.

Mr. BROWN. I think you're correct.

Senator CANNON. Do you see any opportunity here for the creation of any new jobs by this kind of a takeover?

Mr. BROWN. No. From what we can gather—here again, it's very sketchy—on the offer that was made by United States Steel, that Marathon is going to purportedly operate as it has in the past; 2,100 jobs in Findley, Ohio, leaving the management intact.

It certainly isn't going to create any jobs in the steel business, and I doubt that there will be any more jobs created in the oil busi-

ness, since they are going to leave it intact. Thus, if Marathon were permitted to operate as it is, if Marathon creates jobs, they would have done it, anyway, since we're going to have the same management. The same potential for jobs is there whether they buy it or they don't buy it.

Senator CANNON. Isn't this kind of an acquisition, a $5.1 billion, running counter to the efforts Congress is trying to make to get the interest rates down, where companies go out and make these kinds of acquisitions—isn't that going to tend to keep the interest rate up high, the competition for big money like that?

Mr. BROWN. I'm a lawyer, not a banker. I don't know. I would think that you'd have less supply; therefore, the demand would go up. I don't know the answer to that one.

Senator CANNON. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Danforth?

Senator DANFORTH. No questions.

The CHAIRMAN. Senator Gorton?

Senator GORTON. No questions.

The CHAIRMAN. Senator Kassebaum?

Senator KASSEBAUM. No questions.

The CHAIRMAN. Congressman Scheuer?

Mr. SCHEUER. Just to follow up on the question Congressman Coats asked, I had asked you before whether the disappearance of this great Ohio oil company which you have lauded so much would affect competition at the pump, the availability of discount pricing at the pump, by impacting the ability of the retail discount suppliers to buy their gas at competitive discount prices.

You indicated that the competitive situation for the retail distributors of gas at discount prices would be affected.

Mr. BROWN. Yes.

Mr. SCHEUER. Whether the merger was through Gulf—through Mobil or United States Steel.

Mr. BROWN. No. Not through United States Steel. Through the purchase by Mobil. If Mobil is permitted to purchase Marathon. Mobil does not have a track record in selling to independents, nor do they have much of a history in the discount gas market. Eighty percent of Marathon's gasoline that's sold is either sold to independents or at a discount.

Mr. SCHEUER. Are you suggesting that their operations would continue more or less uninterrupted and unchanged if the takeover is by United States Steel?

Mr. BROWN. That's what we now gather, that they are going to permit Marathon to operate as they are presently operating today. But as I said, as to whether they change their mind next year, I am not so sure that those agreements can be enforced.

Mr. SCHEUER. Is there any way that either the State of Ohio or the Federal Trade Commission could require United States Steel to commit themselves to permitting Marathon to continue its present mode of operations, which is the underpinnings of the competitive environment in which those Ohio discount retailers are able to buy their supplies at discount, also?

Mr. BROWN. I guess I can answer that in a more circuitous route. The same thing is happening at the present time with Arab natural gas coming into Cove Point, where everyone agreed that if the

gas is for any reason shut off that the people in the State of Ohio would not have to pay for the capital expenditure of the plant. Well, we are presently before the Federal Power Commission on that issue.

Even though they are not delivering any more Algerian natural gas, we are still in the throes of a tremendous amount of litigation, just trying to get the agreement which we had between the Government and the gas company and the State of Ohio, and we have been litigating it now for a year.

I don't think you can bring the Government into these processes. If I can think of a way, I will certainly send you a note.

Mr. SCHEUER. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. We will start again—did we finish here?

Chairman Dingell?

Mr. DINGELL. I have no questions, Mr. Chairman. Thank you.

The CHAIRMAN. Senator Schmitt.

Senator SCHMITT. Thank you, Mr. Chairman.

Mr. Brown, I am wondering if your office has examined the impact of a takeover of this kind in the credit markets, first, whether the reservation of credit that presumably would be required would put some upward pressure on interest rates within the current marketplace, and second, whether the access to credit that either United States Steel or Mobil would have as a consequence of their improved financial position with the takeover enable them to expand their current operations and in fact discover and produce more petroleum in one case, or more new plant investment in the other?

Mr. BROWN. I am not a banker, sir. I just say that commonsense would tell me if you take a lot of money out of the market, the rates will go up, and there'll be less money to borrow.

Senator SCHMITT. On the other hand, their equity position presumably would be improved with the takeover, and there would be greater access to credit as a consequence.

Mr. BROWN. Yes, I would think so.

Senator SCHMITT. So it's a little hard to tell which way——

Mr. BROWN. We have not done an analysis on it.

Senator SCHMITT. I think that's all I have.

The CHAIRMAN. Congressman Sharp, I apologize, I overlooked you the last round.

Mr. SHARP. No problem. I have no questions, Mr. Chairman.

The CHAIRMAN. Senator Ford?

Senator FORD. No questions, Mr. Chairman. I thank you.

The CHAIRMAN. Senator Cannon?

Senator CANNON. No questions.

The CHAIRMAN. Congressman Coats?

Mr. COATS. No questions.

The CHAIRMAN. Senator Danforth?

Senator DANFORTH. No questions.

The CHAIRMAN. Senator Gorton?

Senator GORTON. No.

The CHAIRMAN. Senator Kassebaum?

Senator KASSEBAUM. No.

The CHAIRMAN. Congressman Scheuer?

Mr. SCHEUER. No questions.

The CHAIRMAN. Congressman Sharp, we're back to you again. Congressman Rogers, did you have any questions?

Mr. ROGERS. No questions.

The CHAIRMAN. Mr. Attorney General, thank you very much. You're a very illuminating witness. I appreciate you taking this much time with us.

Mr. BROWN. Thank you very much.

The CHAIRMAN. We'll move on to a panel, composed of Jack Blum, James Rill, and Gregg Potvin.

Let me say to the witnesses that your statements in their entirety will be placed in the record. It will not be necessary for you to read your statements. I would appreciate it if you would abbreviate them. Make your major points as emphatically as you can, so we have ample time to ask you questions. You can tell there is a fair interest in this subject by the two committees.

STATEMENTS OF JACK A. BLUM, REPRESENTING THE INDEPENDENT GASOLINE MARKETERS COUNCIL; JAMES F. RILL, REPRESENTING THE AD HOC COMMITTEE OF MARATHON CUSTOMERS AND THE SOCIETY OF INDEPENDENT GAS MARKETERS OF AMERICA; AND GREGG R. POTVIN, REPRESENTING THE MARKETERS AGAINST MERGERS

Mr. RILL. Thank you very much, Mr. Chairman. My name is James Rill. I'm with the Washington law firm of Collier, Shannon, Rill & Scott. I'm appearing today on behalf of some 17 independent marketers of unbranded gasoline who are customers of Marathon Oil Corp. and also on behalf of the Society of Independent Gasoline Marketers of America, an association representing some 250 unbranded marketers of gasoline who are independent of the major oil companies.

Senator FORD. Mr. Chairman, I apologize for interrupting. It is is very difficult for us to hear you. Please try the microphone—at least it is for me.

Mr. RILL. Thank you, Senator Ford. Is that better?

Senator FORD. Yes. Thank you, sir.

Mr. RILL. I appreciate the invitation to appear here this morning. Our position and the position of those whom we represent is very straightforward. That is, that the proposed takeover of Marathon by Mobil Oil Corp. would have precisely the anticompetitive effects that the antitrust laws were intended to prevent. The characteristics of this attempted horizontal acquisition and of the companies involved are such that its consummation would significantly reduce horizontal competition in the supply of gasoline to the unbranded retail segment of the gasoline market. As a result: First, a stable low-cost source of supply unbranded gasoline would be eliminated from the marketplace; second, the cost of gasoline to unbranded independent marketers would be increased in the long and short term; third, because of the increase in cost and disruption of supply, independent marketers would become a less effective competitive force; and, fourth, there would, therefore, be a substantial likelihood that the price of gasoline to consumers would increase, as the price depressant effect exercised by the unbranded independent gasoline marketers becomes more limited.

That a horizontal merger which threatens to escalate the price and restrict the supply of products to customers and consumers is for those reasons unlawful, has not been open to serious question, at least, since the first significant antitrust decision under the Celler-Kefauver amendments to the Antimerger Act.

The companies that we represent, which are identified in appendix 1 to my testimony and which are the ad hoc committee, represent a fair cross section of independent marketers of unbranded gasoline throughout the United States, particularly in the Midwest and Southeastern part of the United States, where, I suspect not coincidentally, Marathon is strongest and independent unbranded gasoline marketers are also strongest. They range in size from approximately 10 outlets to approximately 400 outlets.

In order for them to stay in business, it is essential that they maintain a retail gasoline price at the pump which is from 2 to 8 cents less than the pump price at the major branded outlets, such as the Mobil station. In order to implement this marketing strategy, independent marketers must be able to obtain a low cost stable supply of unbranded gasoline. The independent marketers' share of the national market at the retail gasoline level has increased by 20 percent since 1975. And this market share figure substantially understates the share of market of the independent sector of the retail gasoline market in the Midwest and Southeast.

Marathon Oil is the largest single supplier to the independent unbranded market——

The CHAIRMAN. Mr. Rill, let me interrupt you a minute. I would appreciate it—you're pretty much reading the statement. We have read it. We are limiting our witnesses. If you could emphasize the main points—I can speak for myself and the chairman—we have gone through your statement already. It's a good statement. Don't just read it to us.

Mr. RILL. Very good, Senator.

Our position here is very succinct. That is, that Marathon is the paramount supplier of unbranded gasoline to the independent unbranded gasoline marketer. In the Midwest and Southeast, it represents approximately 50 percent, as best we can estimate, of total supply to that market. Obviously, with respect to particular individual marketers, the percentage, represented by Marathon can go up as high as 100 percent.

We have appended to our testimony a table which reflects in rough terms Marathon's importance as a supplier to the independent sector. Marathon is a low-cost supplier and for a variety of reasons, including its reserves, it's a reliable supplier. We have no reason to believe, in fact—to the contrary—we have reason not to believe, that if Mobil Oil were able to take over Marathon, that steady low-cost source of supply would be available to us. As the attorney general of Ohio has already stated, it's simply not in Mobil's track record to sell to the independent unbranded sector of the market.

Mobil's historic marketing philosophy has been devoted to selling through its branded outlets which are in competition with the unbranded sector. Mobil is primarily interested in Marathon, as we understand it, for its reserves, to supply its own outlets and not to maintain Marathon's historic outlet, unbranded marketers. Under

these circumstances, we submit that this horizontal acquisition is of the common garden-variety type of acquisition which violates section 7 of the Clayton Act, in that it removes from the marketplace, or seriously threatens to remove from the marketplace, a particularly strong, particularly price competitive supplier, of a particularly strong price competitive sector of the customer market; that is the people we represent.

We have cited in the statement authorities that support this position and we've urged on the Federal Trade Commission that it take immediate action in court to seek a preliminary injunction and whatever other steps are necessary and appropriate to enjoin this acquisition.

Also in my prepared statement, I make reference to a hold-separate agreement which Mobil presented to the staff of the Federal Trade Commission. I believe the members of the committee and the staff of the committee are familiar with that proposed hold-separate agreement. We have stated to the Commission and state to you that that proposed agreement, as it is, and however it might be rewritten, would provide no protection whatever to the independent unbranded sector of the retail gasoline market, but allow Mobil to implement whatever marketing strategies it chose to implement, in order to use the Marathon reserves and the Marathon system to serve its own stations.

Thank you very much, Mr. Chairman.

[The statement follows:]

STATEMENT OF JAMES F. RILL ON BEHALF OF THE AD HOC COMMITTEE OF MARATHON CUSTOMERS AND THE SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA

I appreciate the invitation to appear this morning on behalf of 17 independent marketers located throughout the Eastern half of the United States, all of whom are wholly or principally dependent on Marathon Oil Company for their supplies of gasoline. We are also appearing on behalf of the Society of Independent Gasoline Marketers of America, a trade association consisting of approximately 250 private brand marketers doing business in 49 states. Their position is straightforward: the proposed takeover of Marathon by Mobil would have precisely the anticompetitive effects that the antitrust laws were intended to prevent.

The characteristics of this attempted horizontal acquisition and of the companies involved are such that its consummation would significantly reduce horizontal competition in the supply of gasoline to the unbranded retail segment of the gasoline market. As a result: (1) a stable, low-cost source of supply of unbranded gasoline would be eliminated from the marketplace; (2) the cost of gasoline to unbranded independent marketers would be increased in the long and short term; (3) because of the increase in cost and disruption of supply, independent marketers would become a less effective competitive force in the retail sale of gasoline; and (4) there is a substantial likelihood that the price of gasoline to consumers would increase. That a horizontal merger which threatens to escalate the price and restrict the supply of products to consumers is for those reasons unlawful has not been open to question at least since the first significant section 7 decision following enactment of the Cellar-Kefauver Act.

The companies identified on Appendix I to my testimony, are different in many respects; however, they share common characteristics which are of critical importance to an evaluation of the Mobil-Marathon acquisition attempt. They represent a fair cross-section of independent marketers doing business in the geographic areas served primarily by Marathon—the Midwest and Southeast. They range in size from approximately ten outlets to approximately 400, and in their dependence on Marathon as a source of total supply their range is from 25 to 100 percent. In most instances, Marathon supplies 50 percent or more of the merketers' requirements.

In order to implement this marketing strategy, independent marketers must be able to obtain a low-cost, stable supply of unbranded gasoline. The independent unbranded marketers' share of retail gasoline sales is rapidly expanding. From 1975 to

1980, it increased by approximately 20 percent, from 10.2 to 12.1 percent nationwide.[1] This market-share figure substantially understates the independents' proportion of sales in areas where they are most prevalent and where Marathon's sales of unbranded gasoline to independents is most substantial.

Marathon is the largest single supplier to the independent, unbranded market. Appendix II to my testimony demonstrates the proportion of non major-branded outlets' sales provided by Marathon in 1980 in some 14 states. However, those percentages significantly understate the percentage Marathon supplies to the independent unbranded market; the universe against which Marathon's sales are measured in that table includes not only sales to unbranded marketers, but also refiner sales to refiner-owned outlets, for all but the 15 largest oil companies.

To many individual independent marketers, Marathon is an even more substantial supplier than these figures indicate. For nearly all of the marketers we represent Marathon is the single largest supplier. For several, Marathon is the only regular source of supply. Marathon's competitive importance is enhanced significantly by virtue of its ability and commitment to function as a dependable and low cost supplier to the unbranded segment of the industry. Not only is its price low, but Marathon's network of terminals and exchange agreements, together with the company's willingness to let customers choose the most convenient location for drawing product, permits the most efficient and low-cost distribution of its supply.

As important as price is a refiner's reliability in making supplies available. The refiner must have a significant level of crude reserves in order optimally to constitute a reliable source of supply. Marathon's crude reserves are a major basis for independent marketers' dependence on Marathon. During the 1974 shortages, throughout the period of controls, and during the 1979 shortage, Marathon was almost unique among suppliers in: first, voluntarily cooperating with the government in instituting non-compulsory allocation programs and, second, in maintaining 100% of its allocation to its customers. Other suppliers reduced allocations, in some cases so as to channel product through company-owned outlets, with the result that many independent marketers went out of business or had to constrict operations substantially.

The independent marketers are unanimous in their belief that they would be unable to replace Marathon with any existing gasoline supplier or suppliers that could offer the same assurances of continued supply, at the same competitive price level.

Because of its ability and proven willingness to compete aggressively in terms of price and reliability Marathon occupies a position of importance in the market even greater than its present share suggests. Because of the disturbing procompetitive force it exerts on the rest of the market, its continued presence as a strong competitor is critical to the continued vitality of its customers, the unbranded segment of the retail market, and the retail market generally.

Mobil is not now a supplier to independent, private unbranded marketers. Aside from sales to large commercial accounts (such as car rental agencies) which are not, of course, retail sales, Mobil markets only through outlets carrying the "Mobil" brand, or other Mobil-owned brand. Mobil's entire marketing program, with its substantial investment in the Mobil name, credit card program, national advertising and other promotions, is geared to the Mobil brand.

There is every reason to believe that Mobil would not suddenly change its longstanding policy of not supplying unbranded marketers if it were to acquire Marathon. We understand that it is Marathon's reserves, not its distribution system or customer accounts, which has made this attempted takeover attractive to Mobil. Very recent attempts by independents to obtain unbranded product from Mobil have met with the same lack of success as earlier efforts.

The substantial probability that, if acquired by Mobil, Marathon would be eliminated as a primary source of unbranded gasoline justifies legal action to enjoin the acquisition under traditional antitrust standards. Marathon's complaint lists six states in which the combined Mobil-Marathon share of motor gasoline sales ranges from 12 to 20%. In five of the six states referred to in Marathon's complaint, Marathon accounts for at least 12 to 44 percent of the unbranded independent marketers' supplies. Particularly significant for purposes of evaluating the potential anticompetitive consequences of the Mobil-Marathon acquisition is the fact that the national share of retail gasoline sales represented by unbranded independents is rapidly expanding, having increased by approximately 20% in the past five years.

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[1] U.S. Dept. of Energy, Petroleum Market Shares, Reports on Retail Sales of Gasoline, DOE Doc. EIA-0066 (80/12), p. 4 (Dec. 1980).

There appears to be no dispute among antitrust authorities that the characteristics and operations of an acquired company which make it a particularly effective competitor and an important influence in maintaining competiton will cause serious doubt as to the legality of a horizontal acquisition, even in those circumstances where market share data alone do not create a presumption of illegality.

Thus, Professors Areeda and Turner explain in their antitrust treatise that the inference of unlawfulness is buttressed where one of the parties is dynamic and its market share is growing.[2] The Department of Justice Merger Guidelines similarly point out that a horizontal merger is particularly suspect if it removes a market factor which is "disturbing", "disruptive", or "otherwise unusually competitive".[3] We understand that the current joint Justice Department-Federal Trade Commission project exploring a revision of these guidelines will very likely stress rather than minimize these non-market-share considerations. The importance of the acquired firm as a pro-competitive influence in the market has been heretofore recognized by the Federal Trade Commission in its assessments of the legality of horizontal acquisitions, *e.g., Stanley Works v. FTC,* (469 F.2d 498, 508 (2d Cir. 1972), *cert. denied,* 412 U.S. 928 (1973). *See also Heublein, Inc.,* 3 Trade Reg. Rep. (CCH) par. 21,763, p. 21, 942 (FTC 1980) (Op. of Comm'r Pitofsky to the effect that non-market-share considerations are important in assessing the impact of a horizontal acquisition); *Litton Industries, Inc.,* 82 F.T.C. 793, 983–5, 1012, n. 37 (1972). *United States v. Aluminum Co. of America,* 377 U.S. 271, 280–81 (1964); *Cf. Peltier v. Humble Oil & Refining Co.,* 1973 Trade Cas. (CCH) par. 74,278 (D. Ore. 1972) *complaint dismissed on other grounds,* 527 F.2d 757 (9th Cir. 1975).

We understand that the FTC staff is considering a hold-separate agreement offered by Mobil, in return for which it would not expeditiously initiate a challenge to the acquisition. The proposed hold-separate agreement would contribute to, not prevent, the adverse competitive impact of the takeover on independent gasoline marketers. We understand that Marathon has argued to the Federal Trade Commission that a proposed hold-separate agreement offered by Mobil to the staff is of questionable legality in that it by-passes the Commission's rules governing the entry of consent orders. We concur in Marathon's arguments.

Most important, the proposed agreement would in no way protect the viability of Marathon as a reliable source of low cost gasoline to independent marketers. The only language of the proposed agreement of relevance here is the statement that, ". . . Marathon's relations with suppliers and customers will be preserved." This provision is so loosely worded as to impose no obligation whatever on Mobil. Even if it were construed so as to require Mobil to honor existing supply agreements, it seems probable that Mobil could, without violating the hold-separate agreement (1) increase prices over those which Marathon has charged and might reasonably be expected to charge in light of its marketing emphasis on independent resellers; (2) change terminal locations at which independents might receive delivery; (3) delay delivery; (4) impose more stringent credit restrictions.

While this list is not exhaustive, it does expose the inadequacy of the hold-separate agreement as a device for maintaining the status quo.

There is a strong probability that the Mobil-Marathon acquisition, if consummated, will cause injury to competition through the elimination of a competitive source of supply of unbranded gasoline and a resultant increase in the price of gasoline at all levels of distribution. In these circumstances, action by the Federal Trade Commission to prevent the acquisition is necessary.

APPENDIX I

Ad-Hoc Committee of Marathon Customers

Mr. Herman L. Brummett, President, Apollo Oil Company, 1200 West Pioneer Parkway, Peoria, Illinois 61615. (309) 691–8615. 10 Stations in Peoria; 12 million gallons annually; more than 50 percent Marathon.

Mr. Richard P. Small, Chairman of the Board, Cheker Oil Company, Post Office Box 162, 1904 Cheker Square, East Hazel Crest, Illinois 60429. (312) 335–0600. 415 Retail Outlets (18 Midwest states); 350 million gallons annually; 25 percent from Marathon.

Mr. Frank Fehsenfeld, Chairman of the Board, Crystal Flash Petroleum Corporation, Post Office Box 684, 358 West Sixteenth Place, Indianapolis, Indiana 46206. (317) 923–2434. 30 Outlets—Michigan and Indiana; 40 million annually; 30 percent from Marathon.

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[2] IV P. Areeda and D. Turner, Antitrust Law, par. 937 (1980).
[3] U.S. Dept. of Justice, Merger Guidelines, par. 8.

Mr. Thomas N. Allen, President, East Coast Oil Corporation, 1420 East Commerce Road, Richmond, Virginia 23224. (804) 232-2373. 29 Stations in Virginia; 38.5 million gallon; 85 percent Marathon.

Mr. Lyle Finley, Chairman and President, Golden Gallon, Post Office Box 5250, Chattanooga, Tennessee 37406. (615) 899-3800. 33 Retail Outlets, Tennessee; 40 Retail Outlets, Georgia; 70 million gallons annually; 85 percent Marathon.

Mr. L. L. (Les) Wright, President, J. & L. Oil Inc., RR No. 1, Box 214A, Mundelein, Illinois 60060. (312) 362-0560. 80 outlets—Illinois, Wisconsin, Indiana, Kentucky, Georgia; 85 million gallons annually; 80-85 percent Marathon.

Mr. James A. Haslam II, President, Pilot Oil Corporation, Post Office Box 10146, 7401 Kingston Pike, Knoxville, Tennessee 37919. (615) 588-7488. 93 outlets in Tennessee, Kentucky and Southeast; 125 million annually; 90 percent Marathon.

Mr. John L. Spears III, President, Remote Services, Inc., Post Office Box 35580, 981 South Third Street, Louisville, Kentucky 40232. (502) 584-1281/(800) 626-5930. 314 stations—139 in Kentucky, 27 in Illinois, 20 in Indiana, 19 in Tennessee, 23 in North Carolina, 1 in Iowa, 7 in Kansas, 16 in New York, 10 in New Hampshire, 11 in Connecticut, 10 in Florida; 182.6 million.

Mr. Roy R. Mason, President, Romaco, Inc., Post Office Box 9068, 1105 Kershaw, Montgomery, Alabama 36108. (205) 265-4555. 175 outlets, Alabama, Georgia, Tennessee, South Carolina, Florida, Mississippi; 80 percent Marathon.

Mr. Henry C. Dodge, President, Savings Oil Company, Post Office Box 1688, Tupelo, Mississippi 38801. (601) 842-7525. 60 outlets—Southeast; 40 percent Marathon.

Mr. Ernst S. Shafer, President, Smith-Shafer Oil Company, Post Office Box 680, 623 Tay Street, Rockford, Illinois 61105. (815) 965-6764. 10 stations—Illinois, Wisconsin, Florida; 100 percent Marathon.

Mr. J. W. Harrell, President, Southwest Georgia Oil Company, Inc., Post Office Box 1510, East Shotwell Street, Bainbridge, Georgia 31717. (912) 246-1553. 25-30 outlets—Georgia and Florida. 95 percent Marathon.

Mr. John E. Henderson, President, Star Service and Petroleum, Post Office Box 1344, Maryland Heights, Missouri 63043. (314) 433-7100. 189 outlets—13 states Midwest, South; 95 percent Marathon.

Mr. John A. Taylor, President, Taylor Oil Company, Post Office Box 5195, 110 Oakwood Drive, Winston-Salem, North Carolina 27103. (919) 725-9531. 55 outlets in North Carolina and Virginia; 30 percent from Marathon.

Mr. Lawrence W. Hammett, Executive Vice President, Thornton Oil Corporation, 10170 Linn Station Road, Louisville, Kentucky 40223. (502) 425-8022. 98 outlets (18 states Midwest and South); 160 million annually; 25 percent from Marathon.

Mr. Vernon L. Cannon, President, Cannon Oil Corporation, Post Office Drawer 1850, Dothan, Alabama 36302. (205) 794-2776. 21 outlets (Alabama, Georgia, Florida); 16-18 million gallons annually; 90-95 percent from Marathon.

APPENDIX II

PERCENTAGE OF NONMAJOR-BRAND [1] RETAIL GASOLINE SALES SUPPLIED BY MARATHON OIL CO. IN SOUTHEASTERN AND MIDWESTERN STATES, 1980

State	Total nonmajor brand gallons (thousands)	Gallons supplied by Marathon (thousands)	Percent of Marathon sales
Illinois	1,441,981	450,817	31.26
Indiana	951,952	114,957	12.08
Michigan	1,086,449	184,407	15.54
Wisconsin	990,289	134,864	13.62
Ohio	1,163,920	51,040	4.39
Alabama	623,052	74,456	11.95
Florida	783,231,	347,349	44.35
Georgia	1,013,981	203,704	20.09
Kentucky	527,174	115,954	22.00
Mississippi	320,562	44,348	13.83
North Carolina	822,753	93,494	11.36
South Carolina	432,918	102,971	23.79
Tennessee	453,280	142,242	31.38
Virginia	677,365	87,337	12.89

[1] Includes retail sales of gasoline under brands other than those controlled by the 15 largest refiner-resellers in the United States.
Source: Lundberg Surveys, Inc., Share of Market Report (December 1980); Marathon Oil Co.

The CHAIRMAN. I want to take the other witnesses' statements first before questioning, but could you differentiate for me if they are different, the group that Mr. Blum is representing, Independent Gasoline Marketers Council, and what is described as the Society of Independent Gas Marketers of America. Are they one and the same?

Mr. RILL. They are not one and the same. There is some overlap among the membership. There's a large cross section of independent unbranded marketers. My understanding is that Mr. Blum's marketers are somewhat smaller in number, somewhat larger in size. In addition, we represent 17 specific companies, of whom 15 have submitted affidavits in connection with the preliminary injunction hearing that is being conducted in Ohio right now. They've taken an immediate and direct interest and involvement in the Mobil attempt to take over.

So we really have two hats today, Mr. Chairman.

The CHAIRMAN. Let's take Mr. Potvin, and then we will conclude with Mr. Blum.

Mr. POTVIN. Mr. Chairman and members of the committees, thank you for this opportunity to appear and present the views of Marketers Against Mergers in an ad hoc coalition of independent small businessmen, who are resellers of Marathon petroleum products in the States of Ohio, Kentucky, Michigan, Wisconsin, Indiana, and Illinois.

My name is Greg Potvin. I am of counsel to the firm of Bassman, Mitchell & Levy and act as Washington counsel for Marketers AgainstMergers.

These independent small businessmen number approximately 500. They serve thousands of service stations and operate thousands more. They serve the energy needs of agricultural, industrial, institutional, and business customers. I have given you in my statement the share of the total gasoline market in each State served by these independent Marathon markets. The numbers are rather remarkable. These independent resellers, in Illinois, for an example, have almost 9½ percent of the total market, ranging on down to slightly more than 1 percent in Ohio. You are to be commended for holding this important and timely hearing, even though the entry of United States Steel as a so-called white knight, has to a degree seemingly removed some of the immediacies from the Mobil bid. Still many vexing problems remain. Many questions of high vital policy persist.

The swirl of controversy surrounding the takeover of Conoco and now Marathon by Mobil has produced at least one useful byproduct. There has been greater recognition granted the importance of

such a merger upon independent resellers for the products of the firm to be acquired. I think there's a sharp irony here, Mr. Chairman. As you have observed from prior testimony during your investigations into this matter, there honestly is a warm, mutually supportive relationship between Marathon and its marketers, both branded and unbranded, and there are lots of both.

How ironic it is that Mobil seeks to transfer them to become their marketers. Let's contrast the temperature of the two tubs there. In the case of Mobil, you've got a class action pending in the Southern District of New York, *Jennings et alia* v. *Mobil,* in which it is alleged that Mobil has violated the antitrust laws, inflicted a price squeeze on its own branded markets. That's a big difference.

Now in the many relevant markets, whether you're talking State or just an individual town, where a Mobil jobber and a Marathon random jobber or distributor are presently in competition, it is perfectly clear that within a relatively brief period after a merger, the Marathon reseller would be eliminated as redundant. What I'm saying, Mr. Chairman, is this: You are refiner A; I am refiner B. In a relevant market we each have a jobber. We each have, say, 10 stations out there selling our product. If we merge, the new entity, we, now have 20 stations. No great problem. Some will be across the street from each other, probably, but outside of that, it's just a simple addition.

However, you have a jobber; I have a jobber. The new entity, we, ain't about to have two jobbers. One is going to go. Functionally, there's just not room for both of them. This is a very serious erosion of competitive forces.

Now you were asking for the distinction between the groups. Let me kind of give you the flavor of the group I speak for. I have a letter here, and I would like to introduce this as an exhibit, if I may. I apologize for no copies. It came by Federal express just this morning. I was glad to see that Federal services are still—I should have said express mail—are still functioning.

The CHAIRMAN. It was a good thing it was mailed yesterday.

Mr. POTVIN. That may be the answer.

This is a gentlemen named Duane Zielke. He's from a town of 5,000 people, New Lenox, Ill. He sells about 2 million gallons a year. Some of Mr. Blum's clients, the largest ones, probably do more than that in a week. He serves 57 farms, 225 commercial accounts, 130 home heating oil accounts, and 165 motor oil accounts. He points out that his farm customers only have to pay a couple of times a year. They're getting credit from Marathon—he's not in a position to give it. Of course, they're only paying 8.33 percent interest, remarkable. He says, again, this program is better for the farmer than borrowing at a local bank. He's got to be right at those numbers.

"To lose a program like this," he goes on to say, "would be a hardship on our distributorship and its customers. We would have to insist on quicker payments from them, plus interest to borrow money."

Finally, he points out that Marathon as of November 19 was carrying $174,000 of his accounts, really the accounts of local farmers and businesses.

So you've got a whole different dimension of competition, in addition to the price competition that is brought to the marketplace by private branders. Very important.

Now the current conventional wisdom of the industry is that other independent refiners remain on the hit list. Citgo, Ashland, Kerr-McGee, possibly others as well. If competition is to be maintained at viable levels——

The CHAIRMAN. I've got to ask you to wrap up your statement, if we're going to hold the witnesses to the time set.

Mr. POTVIN. All right. Let me just say, Mr. Chairman, you've got to consider this against the background of pullouts. Within the very last few days, Amoco, Standard of Indiana, has announced it's pulling out of 11 States. So you are having competition removed from those States. If you're also going to permt it with mergers, I think you've got a problem.

Finally, let me note that the chairman of the board of Texaco has joined the group that has observed the cheapest oil there is, is on Wall Street. He says, "We are cognizant that there is a price at which the purpose of known reserves in the ground is preferable to the risks of exploration."

Finally, we're all cheering, because evidently United States Steel, not Mobil, will do it.

But don't overlook the dangers of conglomerate mergers. I have been greatly heartened at the tone and tenor of the questions from the podium today. This is obviously very high in your mind.

Thank you, Mr. Chairman.

[The statement and letter follow:]

STATEMENT OF GREGG R. POTVIN, ON BEHALF OF MARKETERS AGAINST MERGERS

Honorable Chairmen and members of the Committees, thank you for this opportunity to appear and present the views of Marketers Against Mergers, an ad hoc coalition of independent small businessmen who are resellers of Marathon petroleum products in the states of Ohio, Kentucky, Michigan, Wisconsin, Indiana and Illinois. These independent small businesses number approximately 500. They serve thousands of service stations and operate thousands more. They serve the energy needs of agricultural, industrial, institutional and business customers. The share of the total gasoline market served by these independent resellers of Marathon products in each of the states named above is: Illinois, 9.44 percent; Kentucky, 6.61 percent; Wisconsin, 6.17 percent; Michigan, 4.35 percent; Indiana, 4.30 percent; and Ohio, 1.06 percent.

My name is Gregg Potvin. I act as Washington Counsel for Marketers Against Mergers.

You are to be commended for holding this important and timely hearing. Even though the entry of U.S. Steel as a so-called White Knight has, to a degree, seemingly removed some of the immediacy from the Mobil bid, still many vexing problems remain, many questions of high vital policy persist.

The swirl of controversy surrounding the takeover of Conoco and now Marathon by Mobil has produced at least one useful by-product: there has been greater recognition granted the importance of such a merger upon independent resellers of the products of the firm to be acquired.

In the many relevant markets where a Mobil jobber and a Marathon jobber or distributor are presently in competition, it is clear that within a relatively brief period the Marathon reseller would be eliminated as redundant. This would have reduced competition in these markets substantially at both the wholesale and retail levels.

The current conventional wisdom of the industry is that other independent refiners remain on the hit list—Citgo, Ashland, Kerr-McGee and perhaps others as well. If competition is to be maintained at viable levels, the current intra-industry merger movement must be contained.

There is a sharp irony present in that integrated petroleum companies seek mergers based on a perceived need for additional supplies of crude oil but the cutting edge of that merger eliminates competition most immediately in the marketing sector. The wholesale level appears to be particularly susceptible to this almost immediate elimination of competition, particularly branded jobbers.

If it is not firmly established that Congress and the Administration are determined that Department of Justice Guidelines will be strictly enforced it is all too clear that this merger movement will continue establishing ever more dangerous levels of economic concentration.

In the Wall Street Journal of November 19, 1981 Mr. John K. McKinley, Chairman of the Board of Texaco, Inc. after noting a preference for exploring for crude rather than purchasing established reserves stated, "we are congnizant that there is a price at which the purchase of known reserves in the ground is preferable to the risks of exploration."

While the apparent acquisition of Marathon by U.S. Steel is vastly preferable, from my client's point of view, to the Mobil proposal—since it will permit virtual autonomy to Marathon's marketing arm—we should not take more than the smallest comfort from this.

Mobil has now sought two acquisitions of sister refiners. In each instance, although Mobil's embrace was thwarted, a sale was necessitated. The destabilization of shareholder population resulting from merger bids more frequently than not has this result, I am informed.

Thus, even though Mobil has been twice rebuffed the result has been to add substantially to the level of economic concentration. The result has been one of conglomerate rather than the initially sought horizontal merger. The long range dangers to competition and our free enterprise economy may prove at least as serious, however.

It is our hope that the legacy of this hearing and the work of your Committees will be to sharply increase awareness of and concern regarding the tide of present and potential mergers within the petroleum industry.

Thank you.

EICH LEYERLE OIL, INC.,
NEW LENOX, ILL., *November 19, 1981.*

Mr. GREGG R. POTVIN,
Washington, D.C.

DEAR MR. POTVIN: We are a Marathon Distributor located 45 miles south of Chicago in the town of New Lenox, Illinois with a population of 5,000 people. Our distributorship sells approximately two million gallons of petroleum products a year. Our customers include a wide variety which consist of Farm Trade, Commercial gas and diesel business as well as home heating oil amd motor oil sales. The breakdown of our business is as follows: Farm, 57 accounts; commercial, 225 accounts; home heating, 130 accounts; and motor oil, 165 accounts.

We are involved as a Distributor with Marathon's Credit Program to most of these customers. Marathon Oil reviews the financial condition of each customer and then determines the line of credit for each customer. By this program, the customer has 30 days to pay or on the Variable Farm Credit Terms there may be 3 payments made a year. Marathon's Credit Terms are more liberal than a small distributor may be with his own credit policy, and as such, the customer benefits by having a longer period in which to pay for his product. In times such as this with high interest rates, this is a benefit to the customer and to the distributor. With the Farm Customer, he only pays .833 percent on the unpaid monthly balance. Again this program is better than borrowing at a local bank.

To lose a program like this would be a hardship on our distributorship and its customers. We would have to insist on quicker payments from them, plus paying interest to borrow money to finance our accounts receivable. If we finance the money our selling price would have to reflect the added cost of doing business, thus putting us out of a competitive market. At the present time Marathon Oil is carrying $174,878.01 in our accounts receivable. As you see this is a sizeable sum for a small distributorship to have to take over.

If we could not survive this change in the program, we would lose our entire capital investment which includes both business investments and all personal investments. To us this merger with Mobil would be detrimental to all Marathon Distributors.

Sincerely,

DUANE ZIELKE, *President.*

The CHAIRMAN. Thank you very much.

Mr. Blum, your entire statement will be in the record. If you would abbreviate and give us the high points, we would appreciate it.

Mr. BLUM. Thank you, Mr. Chairman.

There are several matters of concern to my group:

First and foremost is the disappearance of competitors who supply us with gasoline at reasonable prices. The more competitors there are, the more ability we have to bargain and the greater possibility of lower consumer prices. I would like everyone to remember that consumer prices go down as a result of nonbranded competition on the street, which sets the tone of the market; other companies who try to maintain higher prices have to compete with those lower prices.

The disappearance of an independent refiner supplier is critical. But there are a number of other concerns. We're very concerned about how the Federal Trade Commission was acting as if this merger was all right, and that it was talking about a hold-separate agreement.

We think that this merger should never have been considered. The language of section 7 of the Clayton Act should have prevented thoughts of a merger of this variety.

We are very deeply concerned because in the past, mergers were allowed among oil companies, and a condition of the mergers was the creation of a number of marketing companies including some in my group. The theory was Atlantic could merge with Richfield, and other mergers of the same variety could be allowed, by spinning off a string of retail units and creating an independent marketer. Those retail units are now imperiled by the new wave of mergers. I think one has to consider that very carefully.

The question of conglomeration—that is, the rescue by United States Steel—on one level it's a very positive and good thing, in the sense that it keeps a giant in the oil industry from taking away a source of supply of crude and product.

On another level, it raises as a matter of concern to us which is: In a conglomerate, no one knows what anything costs, and when you're competing with a competitor who doesn't know what his costs are, almost anything can happen and probably most of it won't be good for the smaller entities in this industry.

I think our concerns have been that we can't fight these mergers by ourselves. We must have Government involvement. We must have Congress involved, and looking at it, and saying, "You can't do it." And we have to have a clear signal to Mobil to stop, because if today Marathon is not the target, tomorrow Cities or Sun will be the target. You've got to tell them, "If you're going to grow, you're going to grow because you found the oil, and you knew how to market it better, and you are a better competitor"; not because there is a general depression in stock prices, and they have the only cash left in America, because they were very fortunate in the 1979 crisis, to be partners in Aramco, and they were able to sock that cash away, and now use it to make a fortuitous purchase on the stock exchange.

I believe that you all ought to be aware of the degree to which these major oil companies are in joint ventures, and consider that

as well, as you think about whether or not mergers in this industry are appropriate.

There are literally hundreds of interlocking joint ventures, as the House Judiciary Committee has shown. Those joint ventures are production joint ventures. Many of them have explicit exemption from the existing antitrust laws. The existence of those joint ventures and the arrangements which have been created over the years, with the assistance of the Federal Government, are matters that should be matters of concern, as you consider whether or not mergers of this kind should be permitted to go forward.

I think all of these public policy concerns have been left in the background, and this has become a great businessman's game. I submit to you that the main concerns for Congress is that if this game goes on the way it has been going on, it will cost consumers billions of dollars a year in higher prices. The good effects that we had as a result of decontrol—which lowered consumer prices after a while, because the market began to work—will disappear; and the independent businessmen who created a working market will disappear as well.

Thank you. If you have any questions, I will be glad to try to answer them.

[The statement follows:]

STATEMENT OF JACK A. BLUM ON BEHALF OF INDEPENDENT GASOLINE MARKETERS COUNCIL

My name is Jack A. Blum. I am the General Counsel of the Independent Gasoline Marketers Council, a trade association of non-branded independent retailers of motor gasoline.

Non-branded independents purchase gasoline from a variety of refiners and wholesalers and sell it to the public through their directly operated retail outlets. A typical council member operates 200 retail units of the high volume self-service variety. The typical member company also does some wholesale business and supplies individual independant stations.

The non-branded independent station is at the cutting edge of price competition. In gasoline marketing retail station overhead is fixed. The higher a station's volume, the lower its overhead. Because low prices attract customers and build volume, non-branded independents constantly test the price/volume relationship by selling at the lowest price at which they can operate profitably If they can find low priced gasoline at the refinery level their low street prices will force the branded station prices down.

Mobil Oil is now threatening to remove as a separate competitor one of the most important sources of supply to nonbrand independents by buying the company in an adverse tender offer.

If Mobil succeeds we see three very clear adverse effects.

First, there will be a wave of other mergers in the industry. Other domestic majors, and make no mistake, Marathon is a major, will feel threatened and will attempt to craft "friendly" mergers to avoid being taken over. International majors will feel that government has given them a green light and that if they do not take advantage of government's failure to enforce antitrust laws, they will be left out in the cold and will wind up being too small to be an effective competitor.

Underscoring our concern is the fact that a number of major oil companies have arranged substantial lines of credit and the financial press has listed at least six domestic majors as take over targets.[1]

Second, we are certain that a takeover will mean the disappearance of a supplier committed to the non-branded independent market. Mobil, as a matter of corporate strategy will not deal with the non-branded marketers and would most likely move the product Marathon now sells to independents into branded, high priced, high overhead marketing channels.

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[1] See, e.g., Business Week, November 16, 1981, "Are the Oil Takeover Wars Just Beginning?", listing Cities Service, Getty, Kerr-McGee, Pennzoil, Sun and Union as potential targets.

If this happens the ability of our members to bargain with their remaining suppliers over product prices will be sharply diminished. At the present time, there are at least three or four different potential suppliers at each of the major terminal points. If Marathon's price competition disappears and the remaining suppliers realize that they have control of the non-branded market, prices will increase.

Of necsssity this will mean across the board price incrases for consumers.

Finally, the disappearance of Marathon as an independent supplier will mean the loss of a dependable supplier with its own crude resources. Unlike Ashland and unlike virtually all of the smaller refiners, Marathon has extensive domestic crude reserves as well as long term contractual commitments for foreign crude.

We as independents must have reliable suppliers who can continue to deliver product during interruptions in crude supplies.

Notwithstanding the propaganda of the international majors, we non-branded independents do not sell "surplus" gasoline. No retail chain with several hundred stations in a market and sales of several hundred million gallons a year can rely on product surpluses. The retail operation must be backed by contracts with refiners who have crude to make the commitment serious.

The ability of non-branded independents to open stations in new markets is tied to the availability of competitively priced supply. If there are a limited number of independent suppliers then we will be foreclosed from entry.

You, as members of Congress, should be concerned about our fate because every penny added to the price of gasoline costs consumers about $1 billion a year. Gasoline prices are a major component of inflation and a major element of the average family budget. The downward movement of gasoline prices over the last six months has moderated the high inflation rates by providing an offset in the form of a decreasing price.

The international majors would like to add gasoline to the list of commodities and products whose prices go up in response to shortage but never come down. The Congress has the responsibility to prevent that from happening by seeing to it that the law is enforced.

We have analyzed the Marathon/Mobil combination in terms of section 7 of the Clayton Act and we cannot understand why there is any doubt in the minds of the Federal Tade Commission that what Mobil proposes is illegal.

We here today can attest to the significant competitive impact of the loss of Marathon as a supplier. Competition will be significantly diminished in PADS I & II in the sale of gasoline. Prices will go up in Florida, Georgia, the Carolinas, Ohio, Michigan, Indiana, Wisconsin, Illinois, Kansas and Missouri.

Why hasn't the Federal Trade Commission come to talk to us? Where is their concern for the firms which lack the millions of dollars needed to play high stakes takeover law? Why is the debate limited to the parties to the transaction?

Even if the administration feels that the antitrust laws are inappropriate for modern conditions, a view which we do not share, it has a sworn obligation to uphold them until Congress acts to repeal them. Through this hearing the members of the FTC and the FTC staff should be reminded of the law and of their oath to uphold it. We would also urge you to assert your continued support for antitrust enforcement.

Monopoly and regulation go hand in hand. Keeping markets free and open requires that some basic rules of the road be established. Those rules are the antitrust laws. If the market is not kept free, this industry will surely be regulated.

Mobil's present ability to take over Marathon is not the result of its ability or its efficiency. Nor is it related to Marathon's failure to use its assets wisely. On a one for one basis any member of my association is capable of running a more efficient retail station than Mobil. We can get the gasoline from terminal rack to your car at a far lower cost than any major company.

Marathon runs far more efficient retail operations than Mobil and Marathon has taken great exploration risks and succeeded.

Our efficiency and Marathon's is now threatened by Mobil's accumulation of profits created during the 1979 crisis because of its ownership of an interest in the Aramco production company and its right to lift bargain priced oil. Those Saudi concession profits are being used to destroy American competition.

Mobil did not discover oil in Saudi Arabia. Standard of California did. Mobil obtained a share of this Saudi windfall because of the intervention of the United States government which encouraged the creation of Aramco to keep Saudi production in American hands.

Our economic system cannot be permitted to punish the efficient if we are to have any real hope of economic recovery.

Mobil is not the product of aggressive Adam Smith capitalism as its sanctimonious advertising would have us believe, but rather is the product of a variety of government favors, pressed to full advantage.

We urge this committee to see to it that the antitrust laws are enforced and enforced with vigor. Further, we urge this committee to send a signal to other international majors that they should not even think about making tender offers for other oil companies.

The CHAIRMAN. Thank you.

I might say to the members who have just come to the hearing, we are asking questions in the order of appearance, and we are limiting ourselves to 5 minutes in each round of questions.

Let me address this to Mr. Potvin, because you indicated the committees should have some concern about a United States Steel takeover of Marathon, let alone a Mobil takeover of Marathon.

Apart from sheer size of conglomerates, do you have any fear that United States Steel would do anything other than let Marathon continue basically as it operates at the moment?

Mr. POTVIN. No. I don't, Mr. Chairman.

I have discussed this with a number of people who are very close to Marathon management, by virtue of being marketers for that firm for many, many years. It is their judgment—and these are rather seasoned, sophisticated judgments I am referring to—that United States Steel is sincere about granting marketing autonomy to the current Marathon management.

It is rather the spectre of having a handful of huge firms. There is a point beyond which my all-too-finite mind cannot accept the caveat that bigness is not necessarily badness. If you get to the point that you have a literal handful of huge conclomerate firms controlling all of the basic industries of the country, as an antitrust buff, I simply recoil from it.

The CHAIRMAN. I share your concerns, and indeed, I would go further than that. I have yet to see any conglomerate become more effectively managed as it gets bigger and more diverse. Indeed, a smaller, narrow, well-run company could probably compete head to head with that division of the conglomerate that happens to be involved in the same industry. They don't have to go through the layers and boards and decisions within the company in order to make decisions to cut prices and shift products from place to place.

Mr. POTVIN. It's true even within the industry, Mr. Chairman. I think it's axiomatic. I know many of you on your side of the podium have run into this time and time again, even within the petroleum industry; small business marketers can hand the majors their heads any time they want to, given any kind of a fair shot at it.

The marketing expertise won from hard experience in the main streets of America cannot be matched in the corporate palaces. If that's true within one industry, consider when you get 8, 10, 12 steps away into other industries. Of course, you've got to be right.

The span of corporate expertise can only be extended so far. My friends at Gulf & Western would argue otherwise, I'm sure.

The CHAIRMAN. In an amazing moment of candor several years ago, in an interview—I think in Business Week or perhaps U.S. News—one of the vice presidents of one of our major forest products companies, when asked who set plywood prices, said, "Ken

Ford, of Rosewood Lumber Co. sets plywood prices." Probably an accurate answer.

When Ken Ford is operating at full tilt, he has about 3,000 employees in a company that's almost entirely privately held. If he chooses to cut prices $50 a thousand or 50 cents a thousand, ship lumber by truck rather than rail, or fly them if he thought it was worthwhile, he'd make that decision on a moment's notice and do it. Other companies that would have to make similar decisions, if they were initiating them, would take an infinitely longer time to make them. They will follow Ford's lead because they're in a competitive business; but indeed he's in a position to move quicker and faster, and probably with greater business acumen than some of the much larger companies.

Chairman Dingell?

Mr. DINGELL. Thank you, Mr. Chairman.

Gentlemen, I would like to express my personal thanks to you all for your excellent and helpful statements. Mr. Blum is a very dear friend of mine, before the committees. I would thank you for your assistance.

I would also express particular pleasure in seeing my old friend Mr. Potvin, who used to sit on this side of the table in other years. He has now become a great success in practice of law.

Gentlemen, I will have questions the second time around. I just want to welcome the three of you and express particular pleasure at seeing you here.

The CHAIRMAN. Senator Ford?

Senator FORD. Thank you, Mr. Chairman.

Mr. Potvin, you made an interesting statement a moment ago. When you follow the reports of what companies are pulling out of certain areas in certain States, and that sort of thing, it begins to develop a pattern—whether it's real or not, you can almost put it on the chart and see where the major oil companies are beginning to apparently divide up the turf.

Would you agree with that, if you look at the chart and see where they're pulling out and going in?

Mr. POTVIN. Totally, Senator. Some years ago, just prior to the imposition of controls because of the shortage of 1973, I had the high honor to serve as general counsel for the House Small Business Committee, and work under the guidance and direction of then-Chairman Dingell. He was chairman of a different entity in the House.

Senator FORD. Mr. Chairman, I ask that the accolades between people here not be charged against my time.

Mr. POTVIN. We were actually building a map. It was just beginning to happen. You could see pullouts, and there's no question in my mind that the majors wanted smaller, more compact markets with greater shares, eliminating the expenses of exchanges, and that kind of thing.

The regulations stopped it in its tracks. In my view, it's now commencing again. I just don't think there's any question about it. And, of course, a merger automatically eliminates competition, but so does a pullout. If a major refuses to market further in your State, that's one less source of competition.

And I really think the Congress and the administration simply must view these two in concert.

Senator FORD. A rose by any other name, I guess.

Let me ask you this, Mr. Rill. We talked about joint ventures a moment ago.

Is it a good thing to let a selling agent, which is Mobil, the chief cartel member of Saudi Arabia, absorb a company that would otherwise be an independent buyer?

Mr. RILL. No, Senator. I don't think so. That, I think, further underscores the concern that we have with the attempted acquisition of Marathon by Mobil. What I think it does is eliminate a substantial, strong, independent competitor that is vertically integrated into a source of supply of domestic crude, and which has a marketing philosophy of serving the independent sector of the gasoline business.

I don't think from the relationships that Mobil has that there's any reason to believe that they would have that same independent orientation.

Senator FORD. In order to be fair, let me ask Mr. Blum this one. What do you think the effect of this merger would be on other major oil company acquisition plans?

We're going to take a different tone, as of last Thursday. But if that had not occurred, or under the circumstances, how do you feel that this acquisition will affect others that were maybe thinking about it also?

Mr. BLUM. I think we're looking at another round or mergers or another wave of mergers. Even if this goes through, there are three or four companies which, in my judgment, unless a clear signal is sent, will be on the block. We can see them clearly: Sun, Cities Service, which are very large companies, but which don't have tightly held stock, which are undervalued with respect to their crude reserves.

Had this merger gone through, they would have looked around and said, "We can't compete with this kind of gigantic entity, the new Mobil, unless we're part of another gigantic entity." And I think it would have set off a scramble for protective cover, as well as protection of management from stock raiding.

Now, I think the substantial risk is stock raiding. I don't think we should be looking, given the kind of energy crises we've had, to this industry to grow by merger. If anything, the injunction of Congress has been: "Get out there, find more, produce more, and develop more." And Congress has been years, now, looking at the Public Treasury to say, "How can we support these people so that they will help us?"

Now they are turning around and they're just going out and buying each other. They're not doing what you wanted them to do.

Senator FORD. Since I have another second or two here, let me put this question to the panel, maybe.

What influence can the Federal Reserve have on an acquisition of this kind, or the continued growth of conglomerates?

Mr. BLUM. If I may. I think that the lines of credit that have been generated—both to take over and to protect—have had a devastating effect on the economy.

I think the Fed can talk to its member banks and jawbone them into not granting credit for this kind of exercise. We're looking at incredibly high interest rates nationally, which are the product of soaring credit demands. You have to ask what good this kind of credit demand does the country.

Senator FORD. Do other panelists have anything to add to that?

Mr. POTVIN. Yes. I generally would like to concur with Mr. Blum, but point out that there's a dimension here that can escape attention. And that is that many of the potential mergees, so to speak, in quiet desperation have had to go out and get lines of credit for that moment when the move may come. So that it's really very hard to measure how much, in the aggregate, this has dried up the availability of credit. It's a very serious factor.

Senator FORD. I thank the chairman.

The CHAIRMAN. It is the intention of the Chair to go right through the remainder of the witnesses this morning, and finish up the hearing so that we don't have to come back this afternoon.

Senator Cannon?

Senator CANNON. Thank you, Mr. Chairman.

We recognize that the nonbranded independent station is at the cutting edge of price competition. How often do small independent retailers sell gasoline at a lower price than the branded station? Is that a customary thing——

Mr. RILL. Senator Cannon, it's essential that the independent, unbranded marketers sell at a price that is a minimum 2 cents—and preferably more—below the major branded outlet. The reason for that is that their only appeal is price. They operate on a low-overhead, low-cost marketing strategy.

They confront the major brand outlet, which has credit cards, extensive services, and other facilities that the independent, unbranded gasoline marketer doesn't offer. So the independent marketer can only compete on price. And in order to compete on price it's essential that the marketer obtain a reliable, low-cost source of gasoline from a company such as Marathon, which is a historic important supplier and a very competent, efficient supplier.

Mr. POTVIN. Senator, may I speak briefly to that, too?

Senator CANNON. Certainly.

Mr. POTVIN. We are entering watershed times. I can't suggest the answer, but let me sketch out the development.

In the last few weeks, Texaco has imposed a 3-percent service charge on its credit cards. In the past, the conventional wisdom has been: One of the reasons you paid more for branded gasoline was that you got the free use of the company credit card.

Now, if that's to be a side bar item of expense that the marketer has to pay—I'm talking 4 cents a gallon here—who knows what the future holds on the relative pricing of private brand and branded gasoline? But I think that's a major development.

Senator CANNON. Mr. Rill, with respect to this proposed merger, what factors, other than market share, are important to create an assumption of illegality?

Mr. RILL. The fact is, in addition to market share considerations, analysis must include the characteristics of the acquired company—in particular its status as a competitive force in the market.

If the acquired company, as is the case with Marathon, is a particularly price competitive force in the market—and that in the marketing of gasoline—is a particularly reliable source, is a rapidly growing source, and supplies a particular growing customer segment of the market, such as the independent gasoline marketer, then these nonmarket-share considerations may, in and of themselves, justify action by the enforcement agencies under section 7 of the Clayton Act to prevent the elimination of that competitive force.

This is not new theory. This is not frontier section 7 law. This is garden-variety, horizontal merger law, which is recognized in the Antitrust Division's guidelines. The guidelines state that a particularly disruptive, particularly innovative source, should be of particular concern with regard to a takeover attempt, even where the market share factors may not give rise to a presumptive illegality.

As I understand it, those aspects of the guidelines are not the ones that are being seriously challenged or reevaluated by the Federal Trade Commission or the Justice Department in their review of the guidelines. There are a number of cases which support this thesis that are also cited in our statement, Senator Cannon.

Senator CANNON. Let me ask the panel, do you think there would be benefits to the economy as a result of the proposed merger with United States Steel.

Mr. BLUM. I don't see them. If there are any, they are well concealed. I think there's a serious danger in it. The danger is the bigger the corporation gets, the less attention it pays to other particular parts of the corporation is really operating profitably. That's because it's so hard to allocate properly the central corporate overhead.

As Mr. Dingell, I know, is aware, we have been through a series of investigations in the oil industry during which people have tried to figure out whether marketing was being subsidized by the majors. And one after another, people have gone into those major company books, looked, and tried to figure out whether they were subsidizing retail operations, and no one can make head or tail out of the books.

As a result, we've had debates, legislation, questions of divorcement and other issues, and that comes out of the sheer size of the corporations. If you mix it up with another huge industrial entity, deciding whether they're competing fairly on the street against an independent businessman would be virtually impossible.

Mr. RILL. Senator Cannon, may I address myself to that as well? I think you play the cards dealt to you. Right now, in the present context, the companies that we represent have advised us that, compared to the threat of a Mobil takeover, it's quite obvious that the United States Steel offer is welcome. It doesn't present the same dangers that are readily recognizable in a Mobil Oil takeover attempt. We have no reason to believe, in particular, that United States Steel would adopt a marketing strategy that is any different from Marathon's present marketing strategy, with which the independent marketers are very comfortable.

To the contrary, it seems more likely than not that United States Steel would leave Marathon in position to work the way it's been working.

So in that sense that United States Steel's offer to purchase Marathon shares, represents a real and certainly far less anticompetitive threat than Mobil takeover. I would say that the United States takeover offer would be in the interest of the sector of the economy that we represent.

Mr. POTVIN. Senator, being shot in the kneecap is always less fatal than being shot in the head, thereby preferable I take it. However, what I really object to here is you have got this tremendous arrogance of power that we are all facing. Mobil knows what those Justice Department guidelines and mergers are. They knew it when they went for the jugular on Conoco. They knew it when they went for the jugular on Marathon. By the time they get done, the shareholder population is so destabilized that someone has to buy them.

It probably is not possible at this point that the best of all conceivable answers would be that Marathon would endure as an independent entity. So you take the worst of a bad mess, created, as I say, by this arrogant misuse of power, and it's probably a white knight, United States Steel type of takeover.

Senator CANNON. Thank you.

The CHAIRMAN. Congressman Coats.

Mr. COATS. Thank you, Mr. Chairman.

Mr. Rill, you testified earlier that independent marketers marketed at a 2-cent to 8-cent discount on the majors and the attorney general testified earlier of a spread of between 3 cents and 7 cents, at least in Ohio. And I believe you said that this was necessary for independent marketers to be competitive with the majors.

I wonder if you could explain to me just why that is so? What are the economics of gasoline marketing that require an independent marketer to be so many cents under a major to stay in business?

Mr. RILL. It's a package of offerings that the independent, vis-a-vis the major brand station, is making available to the consumer, Mr. Coats. Basically, the independent, unbranded marketer, by definition, is working with a brand that has not had the enormous advertising resources and prior expenditures that have been put into it by the major brand offeror.

Mobil Corp. obviously is one of the great national advertisers. I don't know offhand what its advertising budget is, but by my own unscientific observation of newspapers and television, it's enormous. Unbranded marketers do not have that advertising force from which to attract customer attention.

Second, the unbranded marketers' philosophy is to work on a low-overhead, low-price, competitive formulation. It does not typically use a credit card system; which is, of course, a cost. It does not have a full-service operation, but competes strictly on a low-overhead, low-price, marketing approach.

If the price differential were eliminated or even narrowed substantially, the unbranded independent marketer would go out of business, Mr. Coats. There is no way that the consumer is attracted to the unbranded marketer's station other than by price. And there are other attractions to the major brand outlet.

Mr. COATS. Mr. Blum, is there anything you would like to add to that?

Mr. BLUM. Only that, in gasoline marketing, volume determines cost. The cost of running a station is fixed. The more gallons you pump, the lower your unit cost. By lowering your price, you increase your volume, lower your unit cost, and operate more efficiently. And that is the strategy of nonbranded independent.

So, by their very nature, they have to keep a lower price to keep the volume up to keep the unit costs down. And that's why they're usually in the forefront of pricecutting. They're constantly testing the equation of how low can you drop the price and retain the volume and still make money. It's that function which is jeopardized when their supplies are cut off.

Mr. RILL. We can make available to the committees, Mr. Coats, if it is interested, certain episodes where, for a variety of reasons, including Government intervention there has been a restriction of the differential and the unbranded marketers have suffered very, very substantially.

Mr. COATS. It think that would be helpful, Mr. Chairman.

I would ask unanimous consent that that be provided.

The CHAIRMAN. Not only provided to him, but I think we would like to have it. The committees will hold the record open.

Mr. RILL. Certainly, Mr. Chairman.

[The following information was subsequently received for the record:]

WASHINGTON, D.C., *March 22, 1982.*

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This letter supplements the testimony of James F. Rill on behalf of the Ad-Hoc Committee of Marathon Customers to the joint hearing of the House Energy and Commerce Committee and the Senate Committee on Commerce, Science and Transportation on November 23, 1981. In response to questioning from Congressman Coates during the hearing, Mr. Rill stated that non-branded gasoline marketers lost sales volume when the differential between their price and that of their branded competitors narrowed or was eliminated.

Retail price competition in the gasoline marketplace traditionally has been led by non-branded marketers, who offer gasoline at a lower price level than branded marketers. Non-branded marketers bring lower retail prices to gasoline markets and remain competitively viable by their wholesale buying advantage. Under normal circumstances, the non-branded marketer purchases gasoline at a "rack price" which does not include the cost components (i.e., brand, credit cards, advertising, and maintenance) included in the "dealer tankwagon price" for branded product.

In denying injunctive relief to Texaco retailers who had brought suit to enjoin Texaco from assessing its retailers a three percent credit card invoice processing fee, a federal district court recently noted the effect on price differences on competition in the gasoline marketplace: ". . . sellers of gasoline must price their products close to the level of their competitors or they will lose business. In many regions of the United States, a price difference of one-to-two cents per gallon induces a significant number of consumers to alter their gasoline purchasing habits." *Melso* v. *Texaco, Inc.*, C.A. 81-4209, slip op. at 9 (E.D. Pa. February 6, 1982). The court went on to distinguish between non-branded and branded marketers. It indicated that non-branded marketers sell gasoline at a price generally three-to-four cents per gallon lower than their branded competitors. Id. at 11. The court recognized that some consumers will continue to buy branded gasoline unless the price differential between branded and non-branded gasoline becomes much greater. Id. However, the court found that such brand loyalty does not exist for non-branded gasoline: "Conceivably, those who usually buy unbranded gasoline could switch to branded gasoline should branded gasoline become less expensive in relation to unbranded gasoline." Id. at 12.

The situation noted by Mr. Rill and highlighted by the court in *Melso* has occurred, resulting in distortions in the gasoline marketplace and injuring the competitive viability of many non-branded marketers. The Lundberg Survey, Inc. [Lund-

berg] followed the steady erosion in the non-branded marketer's wholesale buying advantage under the Mandatory Petroleum Price and Allocation Regulations, 10 C.F.R. Parts 211 and 212. This price differential went from eight-to-nine cents per gallon in 1972 to less than four cents per gallon in early 1978. See e.g., Lundberg Survey, Inc., Lundberg Letter, Vol. VII, No. 35 (June 27, 1980). Despite this decline, non-branded marketers generally were able to maintain their market share.

However, the traditional price differential narrowed considerably beginning in late 1978, and actually disappeared twice, causing lost sales volumes for non-branded marketers. Department of Energy [DOD] regulations and the supply shortage in 1979 are blamed by many industry observers for the untenable situation in which many non-branded marketers found themselves. Enclosed are clippings from several gasoline marketing trade publications which highlight the conditions which existed for non-branded marketers during this period. These clippings indicate that many non-branded marketers were forced to close, and often sell, retail outlets in order to stay profitable.[1]

The first disappearance in the non-branded marketers traditional wholesale buying advantage occurred in November and December 1979. In those months, the average dealer tankwagon prices were above rack prices by 0.24 cents and 0.76 cents per gallon. Id. at 2. During this period, however, gasoline was in short supply and marketers could sell all the product which was available.

The second reversal in the traditional price differential occurred in May and June 1980, a period of surplus gasoline supplies. In May, the average non-branded rack price was .04 cents per gallon higher than the average dealer tankwagon price, while in June the non-branded marketer's price disadvantage was .19 cents per gallon. Id. Surrounding these negative differentials were other months during the period when non-branded marketers were competitively burdened by high rack prices relative to the wholesale buying prices of their major-brand competitors. The result was lost sales volume for non-branded marketers.

As noted above, many industry observers blamed government regulations for creating the situation non-branded marketers found themselves in. The widely-publicized plight of independent marketers in Ohio in 1980 is an example. Entitlements benefits afforded to Alaskan North Slope crude oil owned by the Standard Oil Company (Ohio) [Sohio] forced Sohio to sell its gasoline in Ohio under DOE regulations at prices significantly below its competitors. Despite longer hours of operation and price cutting, non-branded marketers in Ohio lost more than 18 percent of their sales volume to Sohio, the leading marketer in Ohio, when the price disparity grew to eight-to-ten cents per gallon. Ohio Independents for Survival, 5 DOE ¶81,306 (1980).

The recent return of vigorous wholesale price competition to the gasoline marketplace has been a welcome relief to non-branded marketers. Non-branded marketers have proven their pro-competitive influence on price throughout the gasoline marketplace. The reduction in price competition at the wholesale level, particularly when non-branded marketers' wholesale buying advantage dips below two cents per gallon, does result in a decline in retail price competition and lost sales volume to the non-branded marketer.

Thank you for allowing us to supplement the hearing record. Please do not hesitate to have your staff contact us if we can provide the Committee with further information.

Sincerely,

R. TIMOTHY COLUMBUS,
COUNSEL TO THE AD-HOC COMMITTEE OF
MARATHON CUSTOMERS.

Mr. COATS. This next question might be more properly asked of Marathon, and I will do that, but I'd like to get the panelists' response to it, also.

Is it Marathon's corporate strategy to market its refined gasoline through independent marketers, or is it simply as a result of the fact that they have not yet developed their own name retail outlets?

Mr. BLUM. They have two strategies. Apparently one is in some States they market through their own direct outlets and they

[1] The material referred to has been retained in the files of the Senate Committee on Commerce, Science, and Transportation.

market through controlled independent companies, previously independent companies with which they've merged. But they do commit roughly 60 percent of the gasoline to the nonbranded, independent gasoline market, outside of the States for the most part in which they operate directly.

So, in the States where they operate directly, the nonbranded independents see them as an awful competitor because they push prices down and they're very, very vigorous on the street in their direct marketing.

But in the other States they're seen as a very valued supplier. We don't see them voraciously expand in their direct marketing.

Mr. COATS. In other words, you could have a Marathon station on one corner competing with a Speedway, which is a Marathon-supplied independent, on another corner, and—is that——

Mr. BLUM. Speedway is either partly or completely owned by Marathon. But where there is—for example, in Ohio—a nonbranded independent, such as Certified, Certified does not buy from Marathon; and Marathon, for the most part, won't sell to them. It's in other States, in States, for example, like Florida, where Marathon will supply to a nonbranded independent competing with Mobil or Exxon.

Mr. POTVIN. Also, Marathon has a vigorous branded distribution system, particularly in Illinois. One of the things I would like to mention, in conjunction with your question, Mr. Blum has mentioned these jointly owned. They are 50–50. There are seven Marathon affiliates, where they are—Marathon is a coowner with the small businessman. In the aggregate, they sell about three-quarters of a billion gallons of gasoline a year.

Think about this. You went to bed with Marathon, you liked their management, you wake up with Herb Shmerz. That's terrible.

Mr. COATS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Gorton.

Senator GORTON. Each of you is, of course, here to testify as to the undesirability of the Marathon-Mobil merger. And each of you, as I understand it, in the course of answering questions, has said that the United States Steel-Marathon merger is undesirable, but considerably less so.

I would like each of you to comment relatively briefly on whether or not you believe that the Congress should pass additional legislation relating to horizontal mergers either by prohibiting or creating a presumption against the validity of horizontal mergers within the petroleum industry or generally, and also whether or not you think any additional legislation is necessary to restrict the type of conglomerate merger which the United States Steel-Marathon also represents.

Mr. BLUM. If I may begin, Senator, I think the crying need is for a little bit of law enforcement. We've been through 15 years in this industry where one successive Attorney General after another has found a reason not to bring cases. I remember being, if not in this room, in another Senate hearing room in 1966, where a Senator from Oregon was busily questioning the Attorney General on why there hadn't been a suit when Atlantic merged with Richfield, when Kerr merged with McGee, when SunRay merged with SunDx, and so on. There has been no will to enforce the antitrust

laws in this country except in things like high school class rings and monopolies in toilet seats for the last 10 years.

I think what we need more than anything else is some vigorous law enforcement. If this merger isn't barred by section 7, somebody hasn't read the law or the cases. I think it's high time we stopped talking about more law and found out where the enforcement authorities were.

Mr. RILL. I essentially agree with Mr. Blum. I think on analysis of the particular Mobil-Marathon acquisition under section 7, the well-established precedents under section 7 are available to make it clear that this merger violates existing law. I personally think that Congress should not enact additional legislation in the antimerger area. I think existing legislation is prefectly competent to the task of preventing those mergers which do have a reasonable probability of substantially lessening competition, including this one.

And I think if Congress were to explore in other areas of antimerger legislation, it could perhaps create more difficulties than it could cure. Therefore, I think the critical need is for more substantial, more effective enforcement of existing law and existing legal principles.

Mr. POTVIN. Senator, the need for enforcement I think is obvious. I would, in general, concur with Mr. Blum's and Mr. Rill's remarks.

I would, however, note that Congressman Brown of Ohio has introduced legislation, H.R. 4930. I believe it has 70 cosponsors. I believe there is identical legislation before this body as well. I do think it's entitled to a hearing. In essence, it would provide for a moratorium on horizontal petroleum mergers until a very fine-tuned study could be made.

Senator GORTON. In this case, just horizontal, just petroleum?

Mr. POTVIN. Yes. We keep saying horizontal. It's kind of hard to say when you have two integrated oil companies merging. If the marketing needs of Mobil indicate that it should go out and find someone with reserves, is that, in truth, as we usually think of it, a horizontal or a vertical, or a mixed merger? The last, I would suggest, comes most nearly to the classic mold.

Mr. BLUM. I think the question of pure horizontal is one that's very hard to deal with in this industry. Marathon broke the world price of oil in the 1960's when it discovered—it and Occidental discovered oil in Libya. That oil from those Libyan concessions broke the world price. That was something that the major companies, particularly the Aramco partners, were particularly upset by. It was that break in price and the subsequent entry into marketing or extensive push in marketing that created a vigorous price competitor.

Who is to say that the buying up of a source of crude by a marketing company won't eliminate a potentially important price competitor at a retail level? And I think that you have to look at this industry as one—and it's not a simple horizontal-vertical question.

Senator GORTON. Thank you, Mr. Chairman.

The CHAIRMAN. Congressman Scheuer.

Mr. SCHEUER. These are extremely perplexing questions, for which there are obviously no simple answers.

I'm a little bit concerned about your suggestion, Mr. Blum, that the Fed should have the right to turn on or turn off private financing based on the criteria of whether it's good for the country. I think this isn't the time when any of us want to see Government—particularly the Fed, that seemsresponsible to no one—getting into the business of saying yea or nay to any kind of business activity. You might want to respond to that.

I am also perplexed as to what our criteria should be for permitting or not permitting mergers when you have a company with this modest share of the market. In Ohio, where we just heard from the attorney general, Marathon has only about 1 percent of the market—of the six States that Mr. Potvin listed in his testimony, two of the others have less than 5 percent, and two of the three remaining have less than 7 percent. Only one has more than 7 percent.

Can it be true that an individual entrepreneur, with only a few—couple of percent of the market, can it be true that the disappearance of that entrepreneur can have this devastating effect on the competitive environment in which the other independent retailers of discount gas have to find their supplies from also, hopefully, a competitive market?

Mr. RILL. Yes, it can, Mr. Scheuer.

If I may just initially answer that, the market share data, in any sophisticated sense are very hard to come by on an area-by-area—metropolitan area-by-metropolitan area—basis. We do know that in the various States of the Midwest and Southeast the market share reflected by Marathon is considerably greater, obviously, than it is elsewhere in the country, that being its principal focus of operation.

We also know, from data that strongly suggest a conclusion, that the shares of the market represented by the people we represent, the independent, unbranded gasoline marketers, are very substantial in that area of the country as well. So you're talking considerably in excess of a 1-percent figure.

More important, as I indicated in the response to Senator Cannon's question, there are strong nonmarket-share considerations, which are accepted under section 7 of the Clayton Act as a basis for prohibiting a horizontal acquisition. Paramount among those considerations are the characteristics of the acquired company as a particularly vigorous growing, price-competitive company and as a company which is almost unique in being a stable, low-cost, reliable source of supply to growing, particularly price-competitive, customer segment of the market.

So the bottom line of my answer to your question is: Yes, under these particular circumstances, it seems entirely appropriate to ignore what may be national market share considerations, focus on local considerations, and focus on the nonmarket-sharing characteristics of the acquisition in the Federal Trade Commission's maintaining an action to block the Mobil-Marathon takeover.

Mr. POTVIN. Congressman, let me say I may have performed a disservice to the committees. The numbers I gave my statement would not be Marathon's total share. As an example, in Illinois, independent resellers of Marathon products have 9.44. Marathon itself has over 12 percent.

Mr. BLUM. Let me respond first to the Federal Reserve question. I don't like the idea of the Federal Reserve passing judgment on business deals, either, but if we can't get the Federal Trade Commission or the Justice Department to look at the law and enforcement, one has to begin to look at the problems in the economy and say somebody's got to do something, because we can't have all of the limited supply of credit sopped up by a deal like this that is probably illegal if the rest of the law were enforced.

Mr. SCHEUER. What do you suggest the Federal Trade Commission can do and that Congress can do?

Mr. BLUM. I think we have to send a very clear signal to these major companies that mergers of this variety won't be tolerated, and coming up with a tender offer, destabilizing the shareholder base, and moving in on them is something that will be vigorously stopped, and then they won't do it—because it will be a waste of their own money.

Mr. SCHEUER. Thank you, Mr. Chairman.

The CHAIRMAN. Congressman Sharp?

Mr. SHARP. Thank you, Mr. Chairman. I would just like to ask one question, if you could elaborate on two things that Mr. Potvin raised and Mr. Blum just alluded to—the destabilization of the stockholder base, and second, the fact of influence on the interest rate, possibly because those who are targets, not just those seeking to buy, but those that are targets of takeovers, may well be out there seeking lines of credit.

Can you help me understand more clearly what is involved there and the potential degree of influence on interest rates that we might be talking about?

Mr. BLUM. What happens in this kind of situation is—and I know it because my phone began to ring the minute the tender offer was made—arbitrageurs buy large blocks of stock and they are gambling on those stocks going up and a bidding war being touched off.

Once the stock is in the hands of the arbitrageur, all he wants out of it is a quick profit, so he doesn't care whether or not Mobil is the buyer or someone else is the buyer, as long as the price is higher than the price he jumped in to buy it at. And those arbitrageurs jump in, they all have Washington counsel, people with ears to the ground, and they want any hint or suggestion of who is going to be the next offeror. They have no concern whatsoever with the welfare of the company, the welfare of the country, or anything other than what they can get for that stock in another 10 days. Once the stock is in their hands, that company is for sale. The only question is who takes it.

With respect to credit, it's the same sort of problem. It's the sopping up. If we have a Fed that's determined to limit the money supply, and banks commit—and there's a limited amount of money that they can commit to without running over their limits, without pushing up interest rates enormously—then money gets committed in these takeover attempts.

You know what the consequences are going to be when the small farmer, the small businessman, comes in to look for a loan. It simply won't be available.

Mr. SHARP. But there's an additional step to that that Mr. Potvin was referring to, and that is not just the people that will be buyers, but those that fear being taken over. Help me understand that a little bit better.

Mr. POTVIN. Let's look at both sides of the tape, Congressman Sharp. One, Texaco let it be known some months ago that they had worldwide raised a merger warchest—I honestly don't remember the number—I think it was $6 billion, $5, $6 billion, so there's that drawdown.

Again, let us assume that you're in top management at, say, Citgo. You know you're on the hit list. You don't know where it's coming from. You don't know when it's coming. I would think the threshold of prudence would be that you had arranged with your friendly neighborhood banker, "Jim, I got to have about $4 billion." You don't what day you're going to have to have it.

Basically, they are call funds, and it's got to draw down considerably on the availability of credit at the lending institutions where you are doing business. How much of that there is, we will never know, because management isn't going to go out and admit to these sort of secret holding arrangements that they have been forced to make——

Mr. SHARP. But you'll agree, it's a very common practice.

Mr. POTVIN. It would have to be, as I say, the bare threshold of prudence.

Mr. SHARP. Thank you, Mr. Chairman.

The CHAIRMAN. Congressman Rogers?

Mr. ROGERS. Thank you, Mr. Chairman. I would like for us to take the proposed takeover and threatened takeover by Mobil to be an example of a larger problem, and to ask some questions about whether or not this proposed merger or takeover in fact has some elements of four fears that I would like to present to you at this time:

One, does this takeover in the oil industry represent an inefficiency of scale? Would this particular merger create, and do the other mergers within the oil industry create, so large an entity that the inefficiencies of scale begin to come to play on the delivery of a very vital oxygen to the American system?

Two, Does this and other mergers represent the creation of multinational international corporations with loyalty to no one nation, and if so, does that create a problem to this country?

Three, does this create a significant elimination of competition within an industry sufficient to bring to bear whatever antitrust laws, FTC regulations, and whatever it may be, as to preclude such a merger?

And four, does this create such an enormous concentration of wealth, capital, and essentially control over a very vital—again, oxygen for the people of the world, especially this country, so that we would be in effect entering the beginnings of the so-called corporate state?

That last worry that I bring to your attention, the concentration of wealth, is very well defined in this report of the committee in the House, O. & I., on the changing distribution of industrial profits, looking at the Fortune 500 list.

I would like to quote some lines from that report:

Traditionally, the U.S. economy has supported a highly diversified industrial base. In the years since the embargo, we have seen the redirection of that economic strength into one industry, energy, at the expense of the rest of the industrial base. The net cash flow of just one company, Exxon, equaled last year nearly $1 billion per month. Four of the five largest U.S. industrial companies were oil companies. The 20 largest oil companies are among the 50 largest industrial companies in the United States. This is significant because in 1970, the situation was very different. This shift into energy exploitation has reduced the United States to the status of a lesser developed country. We are now a net exporter of food and raw materials such as lumber and coal, and we are a net importer of value-added products, such as machine tools.

And the report goes on about—one final point in the report: As Dr. Lorr's report shows, between 1978 and 1980, those companies which comprise the Fortune 500 list increased their net income by $19.6 billion. Of that amount, $19.2 billion, or 98 percent, of the increased net income went to the 44 oil companies, and a dozen oil service and supply companies which are in that list.

An even more staggering statistic is that in the Fortune 1000 list, 82 oil and gas companies obtain 96 percent of the total net income increase. This meant that the more than 900 other companies got to share 4 percent of the total profit increase.

Are we seeing in this proposed merger, takeover, another example of what we may look and see might be such concentration of wealth in very few hands that it poses a real and substantial danger to the American economy and to the economies of the world?

Mr. BLUM. I think two historical points should be made. One, in 1975, Mobil, confronted with potential change in the foreign tax credit, suggested that if the change went through it would move its corporate headquarters outside of the United States so it wouldn't be stuck paying those taxes.

I think Mobil also has demonstrated that it's not afraid to use that economic power because it spent a lot of time and effort talking to journalists and pushing them very hard whenever they criticized the company, including calling publishers and newspapers who write unfavorable editorials, going after Hill staff people who speak about the company or critique them—that's a use of economic power in a way that we haven't seen before. I think you raise some very serious questions.

Mr. RILL. Mr. Rogers, let me explain that basically I am an antitrust lawyer, and I think that two of your questions at least, and possibly the other two, do go to the heart of the antitrust issues involved in Mobil's attempted takeover of Marathon.

I think if you can answer some question, dealing with an immediate and direct impact in an affirmative sense, and not perhaps necessarily answer broader questions, then maybe you should take the easier ones first. And I would suggest it is certainly in the province of Congress to take all of the questions.

To my mind, your first question, "Are there inefficiencies of scale here?" and your third question, "Is there a significant elimination of competition that would result from this takeover?"—the clear answer is "Yes." It's very difficult sometimes to assess efficiencies in a particular product, and geographic market, but it seems to me one of the hallmarks of efficiency is low price. If some companies are able to compete at lower price than other companies, stay in

business, and remain profitable, that suggests to me that those companies are very efficient. This acquisition would eliminate a company with that low-price, low-cost marketing strategy, and for that reason, and for the reasons that I think I have more fully explained in my response to the questions by Senator Cannon and Representative Scheuer, yes, there would be a significant elimination of a very strong competitor from the marketplace that is vital, particularly, to the independent, unbranded gasoline marketer. Because of that sector of the gasoline retail industry's influence on retail gasoline prices generally, I think a significant adverse impact on consumers would occur.

Mr. POTVIN. I would like to vote a very heartfelt "yes" to all four of your questions. On this inefficiency of scale, there's kind of an interesting aspect of it here. No one has said very many kind things about Mobil here, and there are a couple you can say. They do grace the hours of television on PBS with some excellent things, and as a humanitarian venture they buy access to the editorial and opinion column pages of our leading metropolitan dailies to employees whose talents would not automatically gain access there.

But if the consumer doesn't really like to watch PBS, should he have to pay for it? There's just a whole host of fascinating questions there, but I think you are dead right on all four, Congressman.

The CHAIRMAN. Congresswoman Collins?

Ms. COLLINS. Thank you, Mr. Chairman. I guess the basic question I have is one of trying to determine the relevant market. I would like for somebody on the panel to be able to tell me, what is the relevant market for assessing competition in the gasoline sales? Some say it's the State level; others insist it's nationwide. It seems to me that if a driver has to go out of his way by a few miles to get 2 cents a gallon bargain, he is going to spend more money getting there than he will save at the pump. That makes the geographic market pretty small.

Can you tell me, or do you have any data on how competitition in this real market will be affected by the Mobil merger?

Mr. POTVIN. I do, in the State of Illinois, as it happens. I think Illinois is painfully instructive in this respect. You have the metropolitan Chicago area. You have the rather broader reaches of central Illinois, and then you get into southern Illinois. You are quite right; for a motorist—there have been extensive studies done on this. How far will a motorist drive to save a penny, two pennies, five pennies? You are quite right. You get into relatively low double-digit numbers of miles, and that's the parameter.

I would argue that even a State is frequently too much, and I think the Congress has taken note of this in that under the provisions of the Petroleum Marketing Practices Act a refiner was granted the right to pull out from one, a State, or two, a standard metroplitan statistical area a town of 50,000, so when you get into those small Illinois towns that are, say, 40 or 50 miles from the next significant trading center, that's the relevant market for the people living there, it really is.

And if there both is a Marathon jobber and a Mobil jobber, and one is going to be forced out of that relevant market, competition has been substantially diminished. Make no mistake about it.

Mr. RILL. Let me expand on that. I agree generally with what Mr. Potvin is saying, Representative Collins. Under the fundamental principles of section 7, it's not necessary that there be only one relevant market, there can be several relevant markets, your geographic markets and product markets as well. You find competition where you find it. There can be a national market, there can be a regional market, there can be a statewide market, and there can be a market that is as narrow as this side of the freeway in a particular metropolitan area, as you are suggesting.

We have appended to our statement a table as appendix 2, which attempts to identify, I would confess in not so exact terms as I would like, the share of Marathon sales to nonmajor brand gasoline marketing outlets. The definition of "nonmajor brand gasoline marketing outlets" is coincident with a survey, public survey, conducted by Lundberg, Inc., which defines as "nonmajor brand outlets" sales by other than the 15 largest refiner resellers of gasoline. So, what it does is it actually overstates the sales of the people that we represent, because we are strictly unbranded sellers.

But even with that overstatement of the universe, we still see on that table in States such as Florida, 45 percent Marathon share, dependence on Marathon of these outlets in Illinois, 31 percent, and so on down the line to approximately 15 percent, with the exception of Ohio, which is where Marathon has a very large vertically integrated operation.

I think if you broke those down and were to find the more exact data which would disclose the unbranded share of total gasoline sales, and then the Marathon share of supplies to those outlets, you would find a very, very significant State-by-State market percentage represented by Marathon in the Midwest and Southeast. And then I think it would be inevitable that if you were to be able to obtain the data to get down into standard metropolitan statistical areas, and even more refined submarkets, you would find even greater shares and even greater overlaps. If, at any of those areas, any of those regions, there is a reasonable probability that there will be a substantial lessening of competition, that's enough to have established a violation of section 7 of the Clayton Act.

The more refined data, by the way, the precise data that we wish we did have, is the type of data that can come out in the course of litigation on the merits. We submit that these types of data are enough to suggest to the enforcement agencies that there is enough of a probability of a violation for them to take action, and we have so suggested to the FTC.

Mr. DINGELL. The time of the gentleman has expired. The Chair recognizes the gentleman from Pennsylvania, Mr. Walgren.

Mr. WALGREN. Thank you, Mr. Chairman.

Sitting here listening to the questions of Mr. Rogers, I couldn't help but remember an investigation that the House Oversight Investigations Subcommittee did on the multinational corporations' involvement with the uranium cartel. And I think to this day I can quote from the minutes of a meeting of that cartel in Europe in which the group agreed to the following. It said, "We should identify the competition as a prelude to eliminating it once and for all."

I'd like to think that one of the great services the committee did was to bring that to light. In view of that, do you feel that there is

any particular account that our antitrust laws can take of the different character of multinational corporations?

Mr. RILL. I think that's something the enforcement agencies have increasingly recognized. I think in both speeches by William Baxter, the Assistant Attorney General in charge of the Antitrust Division, and in Chairman Miller's testimony, I believe, before the Judiciary Committee of the Senate, they stated that the existence of a multinational corporation as a marriage partner, or, more particularly, of a corporation with a substantial foreign base as a marriage partner, is a factor that should be taken into account in assessing an acquisition under the framework of section 7 of the Clayton Act, and I think that it's altogether appropriate.

Mr. BLUM. Congressman, I worked on this issue for a considerable length of time. And in fact, it has been taken into account. And the way is most peculiar.

By and large, the major international companies have come to the Department of Justice and said, "Look, for various high foreign policy reasons, you can't prosecute us under the antitrust laws." That has now gone on over a period of more than 20 years, and it's outlined in considerable detail in hearings before the Senate Foreign Relations Committee's Subcommittee on Multinational Corporations.

There was an arrangement for policy reasons to end the petroleum cartel case. There were subsequent arrangements to drop other cases or not challenge—the Aramco partnership, the Iranian consortium, and various other arrangements the companies have had among themselves. This was all done for foreign policy reasons because the companies said it was essential to maintain their positions in foreign producing areas.

What I'm finding increasingly hard to deal with is the lack of will of these authorities to enforce the law at any level.

Mr. WALGREN. Let me ask you about that, then. If you were to take a public opinion poll and ask them whether or not they felt that the antitrust laws were effective in achieving their goals, my instinct is there is very little confidence in those laws as working. It's probably based on something as simple as the fact that Bell Telephone System has been in court since 1956, and there's still no resolution to the problem.

Earlier what you indicated is you need more enforcement. Can these laws really work? Are you really satisfied that the judicial system that we're working with can properly address this problem? As antitrust lawyers, do you have confidence in turning to the judicial system and our enforcement system and achieving the goals which those laws are designed to——

Mr. RILL. Mr. Walgren, there's no question in my mind but that the law and the authorities and decided cases under section 7 of the Clayton Act are totally effective to block this acquisition that we're talking about, this acquisition by Mobil of Marathon. There's no question in my mind about that, and I certainly hope that is the outcome of the litigation in Ohio.

Beyond that, we're dealing in some speculation, some hypotheticals. On these facts, I think the law is effective.

Mr. WALGREN. I want to ask each of you to address the question of why is there no enforcement, as Mr. Potvin particularly raised.

Mr. POTVIN. First of all, I agree with my compadre, Mr. Rill, that as to this case, it is abundantly clear that this is not a proper, lawful merger that we're talking about, Mobil-Marathon. Beyond that—and I think your question goes far beyond it—I am not satisfied that the judicial and enforcement people can cope without further congressional action.

Item in point: During much of the 1960's, the FTC was urged to look fully into the concentration of power that was ongoing and the complex of antitrust violations within the petroleum industry. It did so in *FTC* v. *Exxon, et alia.* The problem here is, you are talking about a perfectly monstrous industry. It is so huge I don't know how to describe it, and I don't think most economists do. Certainly those of us who at least try to be antitrust students have a great deal of trouble with it.

By the time the FTC gets the facts down that were occurring at or about the time the proceeding started, those are no longer the operative facts. The Commission on balance was probably quite right to dismiss that action to go back to square one, because in truth the problems that they had amassed, oh, probably several warehouses full of documents concerning, those facts no longer exist. They are no longer relevant.

How do you cope with something of that order of magnitude? I submit only the Congress can do so.

Mr. BLUM. I find it ironic that the last serious major antitrust action in the oil industry seems to have been the Standard Oil case 1911 decree which separate among others Mobil and Marathon. And here we are talking about the reassembling of Mobil and Marathon, which says something about where we've been and where we're going.

The CHAIRMAN. Congressman Markey, we're asking questions on a first-come-first-served basis with 5 minutes in each round. You have just arrived. Do you want to ask any questions right now?

Mr. MARKEY. No, I don't, thank you.

The CHAIRMAN. Let me ask the three of you. I want to make sure I understand about Marathon's structure. They retail gasoline in three different fashions—one through Marathon stations, another through wholly owned subsidiaries with a different name, and third through the independent retailers?

Mr. RILL. That's essentially right. As I understand it, Marathon does have owned outlets which market Marathon gasoline, Marathon brand gasoline. They market Marathon brand gasoline to independent outlets. They also have an owned brand, which I believe is Speedway, and perhaps another which is an owned operation under a Marathon-owned brand, which isn't the Marathon brand. But 60 percent of their volume, more than 60 percent of their product, goes to independent, unbranded marketers of gasoline, the people we represent.

The CHAIRMAN. These independent marketers are what are commonly called gas-and-go stations? They don't fix your brakes, readjust your valves--all of that?

Mr. RILL. Essentially, that's correct, Mr. Chairman.

The CHAIRMAN. When Marathon markets to Marathon stations, are they competing with the gas-and-go type of station or full-time, Mobil-type stations?

Mr. RILL. Both.

The CHAIRMAN. There's never been any complaint from the independents that Marathon tilts toward its own outlets as opposed to the independents? They're totally happy with Marathon's operation?

Mr. RILL. What the people that we represent told us is that they're a tough competitor, which I guess is good for the consumer. But there's no complaint that they've been restricted in supply in any way or otherwise discriminated against that I know of through the competition with Marathon.

The CHAIRMAN. Especially no complaints when crude oil is short and gasoline is short? Marathon has not ever tilted toward its own stations as opposed to the independent stations?

Mr. RILL. To the contrary, Mr. Chairman, the people, the clients of ours who submitted affidavits in the litigation in Ohio have stated that Marathon cooperated entirely with the voluntary allocation program and made 100 percent of its allocation fraction available to the independent sector of the market.

Mr. DINGELL. Would you yield for just a minute?

Your question, I think, is an excellent one and it brings back a long history that I can recall in dealing with the problems of small businessmen, jobbers, and retailers, independent marketers.

Mr. Potvin and Mr. Blum, I think, will remember. Mr. Rill, I haven't had the pleasure——

Mr. RILL. I read the dual distribution hearings, Mr. Dingell. I'm familiar with some of the background that you've had, a lot of the background that you've had and your committees have had in the industry.

Mr. DINGELL. I just wanted to observe what a competent witness you have been today. I wanted to say that in my recollection we have both in the Energy and Commerce Committees and a subcommittee I chaired here for about 5 or 6 years, also in the Small Business Committee where Mr. Potvin and I used to work very directly together, somewhat with Mr. Blum and now I find it a pleasure to meet you, Mr. Rill—we had very few, if any, and I can recall none about Mobil's marketing practices——

Mr. RILL. Marathon.

Mr. DINGELL. About Marathon's marketing practices insofar as they related to small businessmen, independent marketers, independent jobbers, nonbranded dealers, wholesalers, and folk like that who provide the competition which is essential for business.

Isn't that your recollection?

Mr. POTVIN. Mr. Chairman, as a matter of fact, the reason that I have the privilege of appearing before you came about because of precisely that. A client of mine, Illinois Petroleum Marketers Association, during the 1979 shortage when many companies were trying to pull out, were cutting down to, say, a 60-percent allocation fraction, Marathon came into Illinois and voluntarily placed many of its people at 102, 103 even higher allocation fractions.

Further, they voluntarily gave very considerable amounts of product to the State set-aside program that enabled many branded jobbers with other suppliers to make it through the night, so to speak.

Mr. BLUM. I'll just say that I have heard some complaints about Marathon, but they have been from people who haven't been supplied by Marathon, who have to compete with their customers, and they have been forced to lower their prices, and they don't like that at all.

Mr. DINGELL. Thank you.

The CHAIRMAN. I have no further questions. John, go ahead.

Mr. DINGELL. Gentlemen, you have brought to mind, I think, two questions. One is, we have not dealt with the question of heating oil. We've dealt with distillate gasoline.

I want to direct your thoughts to the impact of this hopefully now aborted merger in the area of heating oil, perhaps jet fuel gasoline, perhaps diesel which might be of significant importance to both truckers, transportation, and the farmer who has heavily relied on diesel for his operation.

Mr. BLUM. Mr. Chairman, Marathon is a significant supplier of heating oil and sells to independent marketers, particularly in New England. Its elimination would put considerable pressure on that independent sector in the New England heating oil market.

Mobil has integrated forward by buying distributors and is trying to make that as vertically integrated a control of business as one can. I think it's very much in the interest, particularly of New England, that that be kept competitive.

I'm not sure of the situation in the Midwest, but I believe they are also significant suppliers to independent distributors, both heating oil and diesel fuel, and that it would have significant detrimental effects on consumers.

Mr. DINGELL. Mr. Potvin?

Mr. POTVIN. There are in the Midwest numerous independent truck stops that procure their product from Marathon. And there is much to suggest they would not be able to do so if the merger went through.

There are also a number of small business jobbers that handle jet fuel that they obtain from Marathon. And I think the integrated nature of Mobil distribution of that is very similar to what Mr. Blum has set forth on heating oil.

Mr. RILL. I have nothing to add to that, Mr. Chairman. I concur in the statement of the other witnesses. I have nothing to add to what they have stated in response to that particular question.

Mr. DINGELL. I would observe from the time we commenced the preparation for hearings, I was quite convinced that we could anticipate the merger between Mobil and Marathon being consummated. I think now the chances of that event occurring have diminished significantly.

I'm not sure I greet a merger between United States Steel and Marathon with great enthusiasm, and I'm somewhat troubled about the points that we have been making sort of peripherally. And that is, the purpose of this hearing has now apparently shifted from dealing with the specifics of a Marathon-Mobil merger to perhaps the concerns that I suspect all of us here share with regard to continuing efforts by corporations like Mobil to expand out into other marketers, refiners, producers, and other integrated oil companies.

Now the question is, What is there that we should be doing to essentially prepare against the next onslaught in this area?

Mr. BLUM. I think the best thing you can do is send a clear signal to the Federal Trade Commission that it should be minding the store and the Justice Department that it should be minding the store.

We should be looking at commissions and assistant attorneys general who go in and seek injunctive relief. I think also it wouldn't hurt to send a signal to companies like Mobil and maybe even to Mobil, because I suspect if they lose this one, they'll be out again after Cities or Sun and we can be sitting here in another hearing 3 weeks from now.

Mr. DINGELL. I think the capital system—as long as it is cheap to drill on the floor of the New York Stock Exchange, as opposed to going out in the oil patch, we can anticipate drilling will occur in the most likely prospects.

Mr. BLUM. I was looking at it another way. They keep running those op-ed ads saying they like to drill in wilderness areas. To me, the wilderness they've been looking at is the stock exchange.

Mr. RILL. I think Mr. Blum is essentially correct. I think the function of these committees, since you asked, is to let it be known to the antitrust enforcement agencies, to the Federal Trade Commission in particular, that there is a residual concern—more than a residual concern in Congress that mergers which have a reasonable prospect for anticompetitive impact should be proceeded against as they have been in the past.

Now is not the time, nor is there any foreseeable time in the future, in which this country should be somnolent in its concern with acquisitions which do appear as though they will have palpable adverse effects on competition and, therefore, on the consumer. And I, for one, am very grateful for the opportunity to come here today to discuss an acquisition which I think would have that effect.

I think the committees have served a very valuable function in making that forum available. Thank you.

Mr. POTVIN. This week appears to be producing mounting evidence that messages sent from here downtown don't always get read the same at both ends. Now this being the case, I think it germane to ask, so how do you send a message? It's not a simple question.

It seems to me, considering and holding hearings on something like H.R. 4930 so that you in effect would end up saying, "And if you people don't do something about this, here is what we're going to legislate so that you will do something," I think that a soft message full of subtleties and nuances won't cut it. I think that you have got to make it granitic; you've got to make it specific; and I think you have got to consider putting it in the form of legislation.

Mr. DINGELL. We also look forward to hearing from these gentlemen to encourage them in contributing.

The CHAIRMAN. Congressman Walgren?

Mr. WALGREN. No questions. Thank you very much.

The CHAIRMAN. Congressman Markey?

Mr. MARKEY. Thank you, Senator.

You have touched upon home heating oil and gasoline. What about the concentration of crude oil reserves represented by the proposed merger. Is that good energy policy?

Mr. BLUM. I think it's terrible energy policy. The critical question is the speed with which reserves get developed. If you are a company which has a long, long list of reserves that you can tap, your interest is in feeding it out to the public at a reasonably slow rate so that you can maximize your overall return on the reserve. And what happens is you lock up a longrun supply and then you take as much out of that tank as you need to run your operation.

What the country needs is more reserves developed and put on stream now to cut down on imports and to cut down on the need for expensive synfuels projects. I think what would have happened, had this merger been consummated, is Marathon, a company which vigorously develops its reserves and markets them, would have become a company that operates in a longrun, stately fashion worrying about how to maximize return, and that's just not in the national interest.

Mr. RILL. Let me come at that question with the same basic response, slightly different coloring. One of the reasons Marathon is such an effective, low-cost supplier to the independent, nonbranded marketing sector of the retail gasoline business is that it does have a supply of reserves which it can and does call on in making a stability of supply available. I just don't think that would happen in the face of a Mobil takeover.

Mr. MARKEY. I read somewhere, I think it was in the Times last week, that although Mobil argues that this merger will not lead nationally to such an accumulation of economic power in the oil industry, that there is a real case that can be made that in certain regions of the country, because of the marketing policies of these two oil companies, that indeed there will be substantial concentration of economic power that this merger will result in. Can you address that question? Which regions of the country are we talking about? What States would be most affected?

Mr. POTVIN. Certainly the six upper Midwest States I've been talking about: Illinois, Kentucky, Wisconsin, Michigan, Indiana, and Ohio. When you look at the numbers, they're painfully instructive. Prior to your arrival, Congressman, I brought up the question of reviewing this sort of merger within the context of pullouts from certain areas by certain major refiners. What I'm trying to suggest is this: Clearly it is within the power of these enormous multinationals to so reconstitute their markets that they have much smaller marketing territories with much deeper market shares. There's much going on at the moment to suggest that this is beginning to happen as it had commenced prior to the imposition of regulations, so that yes, I think that's a very well based fear. I think it's a very real and rational fear.

Mr. RILL. Congressman Markey, let me invite your attention to appendix 2, to my statement which attempts, in a rough-cut but I think reliable way, to express the percent of Marathon's sales to the nonmajor brand gasoline sector of the market. It ranges from 15 to 20 percent up to 45 percent in Florida. It's those areas, particularly the Midwest and also the Southeast, in which the unbranded, independent gasoline marketing segment of the retail gas-

oline market is most important, and I think, not coincidentally, also where Marathon is clearly, far and away, the most important supplier of gasoline.

Mr. MARKEY. Now, give me the scenario. What happens when Mobil's bid for the takeover is successful?

Mr. RILL. You have to judge what will happen by what has happened. We have Marathon, which is a reliable, low-cost, steady supplier of the unbranded independent marketer. We have Mobil with the large investment in its brand name, a brand name marketing philosophy which has never sold, I suspect, other than under the mandatory allocation program, to the unbranded independent marketer. It is not consistent with Mobil's marketing philosophy.

We have reason to believe that Mobil, which is a net purchaser of crude, is buying Marathon for its reserves to market it through the Mobil outlets. As a result, the reasonable probability is that Marathon will be eliminated as a source of supply, as the most important source of supply to the unbranded, independent——

Mr. MARKEY. You mean Marathon?

Mr. RILL. I mean Marathon.

Mr. MARKEY. Then what happens?

Mr. RILL. What happens then is that the unbranded, independent is forced out to obtain—to attempt to obtain—sources of supply from those remaining companies who do sell it, and there are some of those companies. In some instances they may not be able to get it at all.

Mr. MARKEY. I say Mobil has given assurances that they will honor independent contracts, have they not?

Mr. RILL. They can honor them from the standpoint of making the supply available, but the contracts themselves don't specify price. They don't specify terminal where the pickup can be made. They don't specify terms of delivery, and in many instances they don't specify credit terms. Or if the credit terms are specified, they often are treated very liberally by Marathon.

The mere supply contract itself is not a full protection to the independent marketer. So even if you accept that on face value, that's not any assurance that the independent marketer will obtain gasoline.

Now, to continue in response to your question, what's going to happen is that the independent is forced to attempt to obtain supplies from other refiner-resellers who do sell to the independent market. To the extent that that product can be made available, there's obviously going to be a very substantial short-term disruption, and I would suggest a long-term as well as short-term price escalation, both at the independent sector of the market and to the consumer, as a result of the potential elimination of Marathon as the paramount source of supply. I think that's simple economics and readily projectable.

Mr. MARKEY. Thank you, Mr. Chairman.

The CHAIRMAN. Any further questions?

Mr. DINGELL. No, Mr. Chairman. Thank you very much.

The CHAIRMAN. Congressman Walgren?

Mr. WALGREN. No further questions. Thank you.

The CHAIRMAN. Gentlemen, thank you very much for your time. We will conclude this morning with Mr. Charles Barré, director and vice president of Marathon Oil.

Mr. Barré, we have discussed your company at length already today. I hope everything that has been said about it is reasonably accurate. You may clear up any mistake that might have been made. You entire statement will appear in the record. You may go right ahead.

STATEMENT OF CHARLES H. BARRÉ, DIRECTOR AND VICE PRESIDENT OF REFINING, MARATHON OIL CO., ACCOMPANIED BY HOWARD HARRIS, VICE PRESIDENT OF CORPORATE EXTERNAL AFFAIRS; AND JACK WHITE, WASHINGTON REPRESENTATIVE

Mr. BARRÉ. Chairman Packwood, Chairman Dingell, members of the committee, my name is Charles H. Barré. I reside in Findlay, Ohio. I am a vice president and a director of Marathon Oil Co. I have with me two other Marathon employees this morning. On my far right is Howard Harris, who is a vice president of corporate external affairs, and Jack White, our Washington representative.

Marathon Oil Co. recognizes that the issues before your joint committees have extremely important public policy implications. For that reason, I want to be as candid and helpful as I possibly can, but I hope you will appreciate that I am in a somewhat delicate position.

You have already heard this morning that in addition to the two competing tender offers, there are quite a number of lawsuits in various courts over the country. Those circumstances, to some extent, preclude me from commenting on certain aspects of our situation because of legal and other constraints. With that said, let me explain to you why the Marathon directors voted unanimously to reject the Mobil bid and how that unwelcome bid dictated subsequent actions by Marathon.

Now, there were many reasons that we rejected Mobil's bid, but we believed two were of most importance; first, the value of Mobil's offer at $85 a share was grossly inadequate, and that was confirmed not only by our own studies but by the studies and advice of our investment bankers. Subsequent happenings, I think, have served to uphold our opinions on that subject and last Thursday the United States Steel Corp. made an offer that far exceeds that of Mobil's attempted raid.

The second reason for rejecting Mobil's takeover bid were the antitrust laws of the country. We're convinced that Mobil's takeover of Marathon would substantially lessen competition in our market areas, and I think you've heard substantial discussion on that this morning. We very carefully listened to the advice of both our own attorneys and our outside counsel, and we were absolutely convinced that it was sound and carefully considered advice, and therefore authorized our attorneys to take legal action accordingly.

But in addition to the financial and antitrust considerations, a vital concern to our shareholders, Marathon's board also took into account very important human factors: A combination of Mobil and Marathon could mean that a significant number of our em-

ployees would have either their jobs or their future careers affected in a not too appropriate manner from the eyes of those, of course, who might either lose or be restructured in their jobs. Marathon's customers, and especially those independent marketers who purchase 60 percent of our output, face the prospect of disappearing from the marketplace along with Marathon. As you have heard, Mobil has a history of refusing to supply unbranded products to independent marketers, and I think it's unrealistic to think that they would change their style of marketing at this point.

Self-serving though it might sound, Marathon's board was also seriously concerned about the impact on the communities where Marathon and its employees have a significant presence. The economic base and character of many communities could have been seriously damaged with a Mobil takeover. Hopefully you can see that there were important, prudent, and inescapable reasons for rejecting the Mobil bid. Mobil's hostile offer drove us to the wall. It set in motion those all-too-familiar circumstances which forced Marathon's officers and directors to take defensive measures in order to properly discharge their fiduciary responsibilities.

In this respect, the Mobil bid was devastating. Existing tender laws and regulations with their extremely short time constraints, are tilted to the distinct disadvantage of target companies. About 60 percent of Marathon's stock is controlled by 100 or fewer entities, and they also have fiduciary responsibility. They make decisions for huge blocks of stock they control for the benefit of pensions, trust, or foundations.

Fiduciary responsibilities force professional portfolio managers to maximize cash values. The Mobil offer, designed in two parts, was calculated just enough above the market to provide an irresistable quick profit opportunity. Shareholders who tendered their stock to Mobil prior to midnight last Saturday, November 21, have a preferential position in receiving the cash portion of the tender offer. This was calculated, I believe, to stampede early tenders, and particularly those from institutions with large holdings.

I hope you can understand and appreciate the dilemma of the Marathon board. Shareholders all have the same rights, but they have many varied and no doubt conflicting interests. In sharp contrast to the large institutional investors, there are many individual Marathon shareholders who have accumulated and held their shares over a period of many years. With the Mobil offer they now have the decision to make either to offer their shares for exchange, or possibly wind up with a vaguely, ill-defined, back-end note payment and their only other alternative would be to get involved in an unfamiliar law, to have their stock appraised, and thus possibly receive a different bank.

Since none of these options were happy ones for our shareholders, Marathon's board had no choice but to search urgently and diligently for a better deal for our shareholders, and I am sure you will understand it had to be done under time and many other constraints, all of which impair bargaining position.

Now, it's a happy circumstance that United States Steel Corp. was actively seeking a major acquisition and diversification into the energy sector. Because of this, their management was willing and prepared to negotiate, and all factors considered, offered a fair

and realistic price to Marathon shareholders. The major reasons that induced us to recommend acceptance of United States Steel's tender offer to our shareholders can be summarized as follows: It provides Marathon shareholders a fair value for their investment in Marathon. The market price of our shares had not, prior to October 30, 1981, even closely approached the price offered by United States Steel.

This diversification of United States Steel into a new business sector avoids the antitrust problem which would infect a Mobil-Marathon combination.

Marathon remains a separate and viable corporate entity chartered in Ohio. Its management and board of directors are left intact, to operate the company as it has been operated for many, many years. Its preservation in this manner does not trigger a restructuring of the oil industry. The jobs, careers, and future opportunities of our employees are generally unchanged. Independent marketers of unbranded and private-brand petroleum products are assured that their largest supplier will remain in business and continue to sustain their competitive viability.

The communities where Marathon is an important factor will not face difficult adjustments. Marathon is preserved as a separate and powerful competitive force in the oil industry. It serves the national interest by maintaining and promoting vigorous competition.

Finally, it provides an escape from Mobil's ridiculously low-valued takeover offer, and all the other problems inherent in a Mobil-Marathon shotgun wedding.

Thank you very much. I will try to answer any questions you might have.

The CHAIRMAN. Are most of Marathon's reserves domestic?

Mr. BARRÉ. The word "most" is bothering me a little bit. We have sizable domestic reserves, but of course as you know, for whatever they may be worth, today we have some reserves in Libya; we have sizable reserves in the North Sea that are in the process of being developed, platforms installed; we also have some relatively new discoveries in Indonesia; we have sizable gas reserves in Ireland.

The CHAIRMAN. Is most of your current production in the United States?

Mr. BARRÉ. At the present time, yes.

The CHAIRMAN. Is that what, in periods of crude oil shortfall, enables you to keep your distributors supplied and even increase the amount you give certain stations who may be otherwise running short because of cutbacks by their providers?

Mr. BARRÉ. Certainly there's nothing safer than to have reserves in our own country. Yes, by utilizing those, we have a firm base from which to continue to be able to supply all of our customers.

The CHAIRMAN. One of the previous witnesses described your retailing mechanism. You've got "Marathon" stations; then you've got apparently some wholly owned subsidiaries, where you market Marathon gas but under a different name. Is that right?

Mr. BARRÉ. Yes, sir.

The CHAIRMAN. Then you have the independent dealers?

Mr. BARRÉ. Yes, sir.

The CHAIRMAN. What portion of your gasoline sales are either through the Marathon stations or through your wholly owned subsidiaries?

Mr. BARRÉ. Senator, I'm not sure I can give you a definite answer; 60 percent goes to the independent brands.

Perhaps I can have some help?

The CHAIRMAN. That does not include your independent brands; is that right?

Mr. BARRÉ. No. It does not.

The CHAIRMAN. So only 40 percent of your gasoline is marketed either through a station that says "Marathon" or through a station that you own, but that has a different name?

Mr. BARRÉ. Yes. That is correct.

The CHAIRMAN. Was that by a 2-to-1 vote?

Mr. BARRÉ. No.

The CHAIRMAN. I believe I'll hold on the rest of the questions right now.

John?

Mr. DINGELL. Mr. Chairman, thank you.

Gentlemen, can you describe the situation as regards to takeover attempts by Mobil of Marathon, both in factual statement as to the events as they occurred, and also the current status of it?

I would appreciate a brief comment at this point, and subsequent comments in more expansive form, if you wish to, for the record.

Mr. BARRÉ. I will try to give you as complete a rundown as my memory will let me.

At about 11:30 on "Black Friday," October 30, the chairman of Marathon, Mr. Hookman, received a call from Mr. Raleigh Warner, the chairman and chief executive officer of Mobil.

In that very brief telephone conversation, Mr. Hookman was advised that Mobil was making a tenderoffer for Marathon at $85 a share. The conversation was brief. Immediately, the inside directors of Marathon Oil Co. were called into a meeting and made aware of the telephone conversation.

Within a few minutes, a courier arrived at our receptionist, delivering us all the appropriate legal documents to set the wheels in motion, so to speak, of the attempted takeover.

Now, I am sure you can understand that with all that had been in the press over the many days in the past, even though we're located in a small town in northwest Ohio, we weren't completely unaware of the fact that something of this sort might happen to us. Therefore, plans that had been tentatively put together were immediately put into motion, and I think you are aware that by Sunday night, we had succeeded, with a Federal judge in Cleveland, in obtaining a temporary restraining order.

Now, as the various legal activities of both sides evolved, we were able to file a lawsuit. It was scheduled for trial, and I think today they are probably summing up the various sides; and hopefully there will be a ruling before too many days.

At the same time, there were many other law suits filed in different areas. Most recently, you heard this morning the attorney general of Ohio also filed a suit. The number of these various activities began to change the dates involved around the Mobil offer,

and as they now stand, the proration date was, as I mentioned earlier, 12 midnight, November 21.

The withdrawal date is December 1. And the offer expires on December 11.

Last Thursday, November 19, United States Steel made their tender offer. Their proration date is November 28 at 12 midnight, and their withdrawal date is midnight December 10; and the offer expires midnight on December 17.

Have I answered your question, Mr. Chairman?

Mr. DINGELL. I think you have give us good response to the question. If you have anything further that you would like to give us for the record, it would be appreciated.

Can you describe the situation, in so far as it is now—the number of shares of Marathon that have been taken over by Mobil, and whether or not the attempt is still going on?

Mr. BARRÉ. Well, the proration date is very important as to who receives cash versus paper.

I was advised this morning—and you must understand that what I say to you is merely what I heard this morning—that there were approximately 23 million shares tendered to Mobil prior to midnight last Saturday. Now, their original offer had been an attempt to try to acquire 40 million shares for cash.

So, with our almost 59 million shares outstanding, as of the proration time, Mobil does not have a large enough block to be able to control at least 50 percent of the company.

Mr. DINGELL. A practical effect of this, however is— what was the sales price as of the time that this whole event occurred?

Mr. BARRÉ. As I remember, it was in the mid-1960's.

Mr. DINGELL. The mid-1960's. Mobil offered $85 or thereabouts?

Mr. BARRÉ. Yes, sir.

Mr. DINGELL. United States Steel came in with an offer of $125?

Mr. BARRÉ. Yes, sir.

Mr. DINGELL. If Mobil is successful, it has bought reserves, you told us, of over $180 per share, plus refining, distribution, pipelines, and so forth. Is that right?

Mr. BARRÉ. Yes, sir.

Mr. DINGELL. If Mobil does not succeed in its takeover, it will have achieved at least two things:

One is probably a profit of about $40 a share. Is that correct?

Mr. BARRÉ. Not necessarily. You see, the next important date is the withdrawal date, and that is December 1. Now, I'm told that the way you play this game is, you tender prior to the proration date, still have a number of days to withdraw. In the event Mobil were to increase their offer, it's a little bit unclear as to whether or not they would legally have to, or would choose to, change their proration date.

So, those who are playing the game for the most potential profit would naturally tender before Mobil's proration date, still having the right to withdraw and tender to United States Steel, anytime prior to December 1. So, it could well wind up that Mobil would own only roughly the 179,000 shares they advised us they had purchased in early September.

Mr. DINGELL. But that number of shares, they could still sell, let's say, for any additional number that they would get as a result

of this exercise to United States Steel, for $125 a share and make a tidy profit. Is that not so?

Mr. BARRÉ. I believe it is.

Mr. DINGELL. They also, if they succeed in getting and retaining any goodly number of shares, they would then have a right to, at your next annual meeting or at your next election of members of the board of directors, place directors on your board; would they not?

Mr. BARRÉ. That would depend upon how many shares United States Steel winds up controlling.

Mr. DINGELL. But, in theory, they would have the capability of doing that to at least some degree; would they not?

Mr. BARRÉ. Not necessarily. The announced intention of United States Steel is that if they control the majority of the shares, they have formed an Ohio corporation, USS, Inc., and it would be—it is that company that is acquiring the shares on behalf of United States Steel.

When the appropriate legal number of shares have been obtained, then United States Steel, Inc., would be merged into Marathon Oil Co.; and it then will remain an Ohio corporate structure whose control, then, will be in the hands of the United States Steel.

Mr. DINGELL. But Marathon is going to remain a separate corporation, is it not?

Mr. BARRÉ. It will remain a separate corporate entity.

Mr. DINGELL. Won't it also have its own directors?

Mr. BARRÉ. Yes, but they will be subsidiary directors.

Mr. DINGELL. So, what you're telling me then is that the problem of Mobil putting officers on the board of Marathon is not one which remains, or one that should concern us under the antitrust laws, but Mobil would still, if it had a sufficient number of shares, be able to place a director or directors on the board of the newly merged corporation, United States Steel, or whatever the name would happen to be; is that not so?

Mr. BARRÉ. Mr. Chairman, I don't think so, but I'm not an attorney, and so I can't definitely speak to that.

Mr. DINGELL. They have an election; if they've gotten enough shares, or they bunker, or they have got cumulative voting, they could probably put people on the board; can they not?

Mr. BARRÉ. But you see, when United States Steel, Inc., gets control of the company, then under appropriate conditions they will exchange their debentures, United States Steel debentures, for the balance of Marathon's shares. And that will be the forced transaction; and the shareholder will either have to accept that or go through the Ohio securities laws for those who are dissenting shareholders.

But one way or another, there will be no voting power to elect directors to Marathon Oil Co.

Mr. DINGELL. I see. You have abated some of my concerns.

Now let me ask you this: In the absence of a tender offer from Mobil, would Marathon be entertaining a merger proposal from United States Steel?

Mr. BARRÉ. Congressman, I don't know of a single Marathon officer, employee or customer, who was not extremely happy as we were prior to October 30. As far as I am concerned the answer to

your question is, "No," we would not have been looking for a merger with United States Steel.

Mr. DINGELL. Mr. Chairman, I have taken over my time. I'd like to ask some other questions. I will defer.

The CHAIRMAN. Mr. Markey?

Mr. MARKEY. Just following up on the chairman's question. Can I infer from your answer that you would prefer not to be dealing with United States Steel right now?

Mr. BARRÉ. Not quite, Congressman. Under the conditions that immediately came to pass after Mobil's attempted takeover, every Marathon employee has said to me those that I've come in contact with, every supplier, every community seems to be extremely pleased that United States Steel has come to our rescue.

Mr. MARKEY. OK. Where is United States Steel getting this money from? The steel industry has been pressing Congress for the past year and a half to pass 10-5-3 legislation so that they will be able to have tax incentives which they need in order to expand. Where is the steel industry coming up with the kind of revenues—what are we talking about? $6 billion or so—to be able to make this kind of a capital outlay?

Mr. BARRÉ. Congressman, I'm sorry. I can't answer your question. I'm pretty much in the position of a future son-in-law. I honestly don't know.

Mr. MARKEY. Well, do you think that some of the answer might be that it will come from Marathon profits rather than from United States Steel itself, from their own assets?

Mr. BARRÉ. Well, here again, I can't answer. I can only tell you the impression that was left with us. And the answer is "No."

Mr. MARKEY. The impression is left, so what is the impression that they left you with? Where do they think they're going to get the money from?

Mr. BARRÉ. Again, I'm sorry I can't answer where they think they're going to get the money.

Mr. MARKEY. You're under the impression that it's not going to come from Marathon's assets, but you are of the impression that they have assets to take care of this?

Mr. BARRÉ. Yes.

Mr. MARKEY. Yes, but you are completely and totally ignorant as to where those assets might originate?

Mr. BARRÉ. Fortunately, that is the case.

Mr. MARKEY. Fortunately?

Mr. BARRÉ. Unfortunately.

Mr. MARKEY. Unfortunately. Well, I think in light of the testimony that the Congress has heard in the past year or so, it might be very likely that the assets that we're talking about them tapping might be, indeed, the assets of Marathon Oil, that they might be looking to Marathon as the source of revenues that they will need, in order to finish the purchase.

I'm just wondering whether or not you think that that would be. If that is the case—if that is the case—and I think there's a great likelihood that that is the case, what do you think about that as an appropriate tax and oil policy for the country?

Mr. BARRÉ. Well, Congressman, I'm not trying to dodge your questions, but it is a fact that I am not privileged to know what

United States Steel plans, actions or reactions might be. I can only say that the joint press release that was issued last Thursday morning says specifically two things, that United States Steel will continue to operate the steel industry as planned, and that Marathon will continue to operate as it has in the past. Now I have no choice, I have no reason not to believe those statements.

Mr. MARKEY. I can appreciate that, because it's a rather ambiguous statement. I can conceive of where they would be able to do both. The question is where they're going to get the funding to do both. We have been asked to pass the steel stretch-out bill, to pass variations on 10-5-3 accelerated depreciation legislation to give them a hand, and what we now wonder is whether or not these revenues, not unlike the windfall profits tax battle we had here and the accumulation of revenues in the hands of Mobil and other energy giants, are going to be used for other purposes than which Congress intended them to be, which is to make them more competitive in the industries in which they are competing, so that they can produce more of the product rather than to use this money for diversification purposes.

So I guess my question goes to whether or not it is an appropriate action not just for Mobil but also for United States Steel to be moving over and to trying to take over these kinds of companies. Should we be trying to pass strong Federal antitrust laws to protect Marathon from takeovers from either of these companies?

Mr. BARRÉ. I think I said earlier we were very happy as we existed prior to October 30. Now the key word in all of this, in my opinion, is friendly or unfriendly. Certainly, the Mobil attempt at Marathon by no stretch of the word could be categorized as friendly.

Mr. MARKEY. If we were able to pass a strong antitrust statute to block the unfriendly—the unfriendly takeover attempt, would you then feel that the Marathon shareholders would be now turning to United States Steel and others to find some friendly takeover partner?

Mr. BARRÉ. Well, the average long-time Marathon shareholder would not have been turning to United States Steel. And speaking a little bit of the financing, perhaps I can speak to that. The cash portion of United States Steel's offer is approximately $3.7 billion. The balance of it, in one sense of the word, is self-financing, in the way of 12-year debentures or notes. So that over a period of 12 years, I do not feel that it is all that uncommon for a large corporation to go to the market to borrow money under those circumstances.

Now as to where or how they might have decided to finance the up-front portion, I cannot speak to that.

Mr. MARKEY. I guess what I'm trying to get at is not what might be good for your company here in this particular instance, and I can understand where you would want to find a "white knight" in order to make it possible for you not to enter into the shotgun marriage, and United States Steel plays that role very well for you. But I'm talking about a policy for the country. And for those purposes I would wish that you could give this subcommittee your comments on whether or not you think that strong antitrust measures ought to be invoked against Mobil.

Do you agree with that?

Mr. BARRÉ. Yes, I do. We filed suit in Federal court on that absolute specific point. As to whether or not the laws need to be strengthened or not, I can't say, because I do not know how the present lawsuit that is in its final stages today will turn out.

We felt existing laws were strong enough that it was a violation and it is a violation. On the other hand, the position that the unfriendly offer put us in, once all of these wheels started to turn, we felt we had no other realistic way out of this unfortunate dilemma, except to find a "white knight," as you characterized it.

Mr. DINGELL. Would the gentleman yield? When you said a violation, you meant a violation of the antitrust laws?

Mr. BARRÉ. Yes; I attempted to make one point in my earlier remarks, and that has to do with the tender laws and regulations. I think that's known as the Williams Act. All of those are in the advantage of the pirating company. The poor company who's under the gun has all the disadvantages of short time periods, in order to be able to marshall his forces to adequately take whatever steps are necessary and attempt to convince his shareholders that they should not tender their shares to the company that is attempting to acquire them.

I think perhaps some reevaluation of those laws and regulations might be in order.

Mr. MARKEY. Let me—I know my time has expired. I don't want to infringe upon the chairman's genorosity. We wouldn't be in this problem right now, would we, if you had confidence that the antitrust laws in this country had real teeth in them? If you really believed that this country had a policy which would not allow giants to go around gobbling up smaller countries and believe that there was a policy that you could look to, then you would not have as a first resort looked for a friendly partner that you could construct a political strategy and a financial strategy to block that takeover, is that not so?

Mr. BARRÉ. I would like to put it in slightly a different way. We would not be in this position if Mobil believed that it was a violation of the antitrust laws. Now once those wheels start to turn and the stock takes tremendous upward jumps in price, you get all kinds of shareholder actions and reactions and new shareholders, and everything. Then it's a completely different situation.

Mr. MARKEY. I understand. But it's two parts though. On the one part, it's Mobil taking a risk, and on the other half, it's you believing that despite the fact that they're going to take a risk that they are in violation of the law, and the law is there, it's tough, it's strict, and it won't allow for anticompetitive, anticonsumer oriented activities to take place and that these laws will be invoked by the Government. Is it not a fact that one of the real problems that you have is the justifiable apprehension as to the seriousness with which this administration and past administrations will invoke antitrust actions in order to give protection to you, and as a result you are forced to look to third parties as a way of protecting your rights, because you don't believe that the Government offers you that kind of protection.

Mr. BARRÉ. Certainly, we believe that in a lawsuit there very seldom is an ability to absolutely predict the outcome. So, yes, there was some concern.

Mr. MARKEY. There was some concern, and the result then is a very unproductive use of capital. On the one hand, we have Mobil using revenues which have been permitted to be compiled by them by the Federal Government and our decontrol and deregulation policies for the specific—with the specific intention of having them use them to generate new production in this country, and instead using them to take over other companies. And as a substitute you will now tell us that we will take steel company money, revenues which we have tried to put in their pockets so they can do the job of revitalizing that industry, and they will use it again in a nonproductive way to take over another company.

And what the clear message that—just by dint of your sitting here and testifying this morning, is that there is no real tough, strict antitrust provisions which can be relied upon by companies to guarantee that they cannot be preyed upon by larger conglomerates that have substantially greater resources; is that not so?

I mean this is really in both cases a pretty unproductive use of capital in this country, would you not say, either the takover of you by Mobil or the merger of you with United States Steel and having United States Steel use their resources in order to purchase an oil company?

Mr. BARRÉ. Certainly. Mobil would have, in my opinion, helped the country much more if they had trended their investment opportunities in an attempt to find more domestic oil, without question. As far as United States Steel, again I must say I cannot answer for them. In what I have read about them, they have recently sold a number of properties. They've sold coal interests and others, and as a result, have accumulated from those sales, quite a few dollars up in the millions in cash. As to the source of the funds which they intend to use for this acquisition, I am completely ignorant.

Mr. MARKEY. Again, and I don't want to put you too much on the spot. I don't want to try the patience of the chairman. Just to follow this though, if we get into a situation in which nonenergy related companies are spending their resources, their resources that we in Congress are trying to direct into productive areas of the American economy, that we get very little on the return, as a nation, from the tax policy that we established in this country, if these companies decide instead to take the revenues which we have allowed them to accumulate and to then spend them rather than a new production, but rather in these kind of horizontal takeovers of other companies.

Would you agree with that just as an economic principle?

Mr. BARRÉ. Well, I choose to look at it, Congressman, in this way. If Marathon and Mobil had gone together, many of the activities of Marathon in all areas of the energy sector would have been adversely affected—offshore drilling, the ownership of Federal lands under lease—and none of those unfortunate things happen if we are ultimately bought by United States Steel.

So there was no problem in making the choice——

Mr. MARKEY. Again, that's good for Marathon Oil. I'm talking about the country now. I'm trying to get you to focus on the overall needs, the economic needs of the country. We are a capital poor

country right now. We don't have that much discretionary capital available for investment.

In trying to make determinations as to where that capital can be best expended in order to give the shot in the arm to the growth of the economy that we're looking for, I'm asking you to make a judgment on whether or not, if you had your druthers, United States Steel would be making that kind of purchase of you as well as whether or not Mobil would be trying to make the same kind of purchase of you and whether or not in both instances the country might be better served by seeing these revenues directed into real, productive investment rather than just this kind of corporate merger or acquisition.

Mr. BARRÉ. I think I previously said we all would have been very happy to have remained as we were. So in that context and to that degree, I agree with you.

Mr. MARKEY. Thank you, Mr. Chairman.

Mr. DINGELL. Gentlemen, can you give us some appreciation of the affect on your sales of gasoline, both through your own outlets and through independent marketers who purchase from you and also on heating oil, jet fuel, and diesel, had this takeover occurred by Mobil of Marathon?

Mr. BARRÉ. Well, it's very difficult, I think, to predict what might happen. Perhaps I should ask Mr. White.

Mr. WHITE. I'm not totally certain I understood your question, Mr. Chairman.

Mr. DINGELL. We have heard there are a goodly number of antitrust implications from the Mobil takeover of Marathon. We have discussed in extension the consequences with regard to your gasoline sales policies and programs. There has been rather less discussion of the economic consequences, particularly as regards the independent jobbers and retailers in the area of heating oil, jet fuel, and diesel.

I'm just wondering if you could give us some appreciation of what would have been the consequences of this takeover, if it were to have occurred or were to occur, with regard to heating oil and also diesel.

Mr. WHITE. With regard to heating oil, jet fuel, and diesel, which isn't too far different, the consequences have been about the same. Many of the people you heard this morning represented their clients, who are also heating oil and diesel oil——

Mr. DINGELL. You're saying the consequences would have been about the same with regard to gasoline as regards both heating oil and diesel fuel?

Mr. WHITE. Yes.

Mr. DINGELL. Would you want to amplify on that just a little?

Mr. WHITE. I don't think so. I was going to address the jet fuel thing. We do not make jet fuel, so that just about takes care of that problem.

As far as home heating oil and diesel, I think the consequences would be about the same as they would with gasoline. We're talking substantially about the same market or markets.

Mr. DINGELL. All right. Now we have a phenomenon here that apparently relates to two things. One is the assemblage of capital resources, either to take over or to defend against another corpora-

tion. Mobil has a takeover fund of what size? I saw a figure of $6 to $9 billion awhile back. It's been widely publicized in the papers.

Can you help us with regard to the size of that figure?

Mr. BARRÉ. No, Mr. Chairman, I'm not certain of the general range that you indicated.

Mr. DINGELL. Almost every one of the major U.S. corporations now that is profitable is in the position of either having to establish funds or lines of credit for takeover or for defense of takeover; is that not so?

Mr. BARRÉ. I believe so, Mr. Chairman.

Mr. DINGELL. It's true in the case of almost every U.S. corporation, is it not?

Mr. BARRÉ. I can't speak of every U.S. corporation, but certainly those oil companies who have generally been discussed in financial circles as being potential takeover candidates, I think most all of those have done exactly what you indicated.

Mr. DINGELL. They are all setting up either a takeover fund or a defense fund, but their takeover funds are ofttimes defense, are they not? In other words, they figure one of the tactics they may have to use is to set up a fund so that they can take over some other corporation so that they get too big to swallow. Isn't that right?

Mr. BARRÉ. Yes, it is.

Mr. DINGELL. What's the effect of these takeover funds on the capital markets? Do you have any appreciation of that? It's obviously drying up moneys that can be used for productive investment, is it not?

Mr. BARRÉ. I'm not a financial man, so you must take my answer in that respect. But a lot of these so-called funds that are made available come from foreign banks, Eurodollars, and all of it, as far as I know, does not necessarily come from the U.S. financial markets. But there is no question that if you believe there is so much money in the world, so many dollars in the world, regardless of where it is, it is ultimately tied up, it probably does have some effect.

Now most of these funds were set up as on-call funds. And until you actually take the money down, why of course it is nothing more than a commitment by banks to make it available upon call.

Mr. DINGELL. You have to pay money for that, do you not?

Mr. BARRÉ. Yes.

Mr. DINGELL. What's the magnitude of those payments? Do you have any appreciation?

Mr. BARRÉ. No, I don't.

Mr. DINGELL. It's a comfortable figure.

Mr. BARRÉ. I'm sure we could make that available to you after the hearing here, but I just don't honestly know.

[The following information was subsequently received for the record:]

MARATHON OIL CO.,
Washington, D.C., March 24, 1982.

Hon. ROBERT PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Washington, D.C.

GENTLEMEN: To complete the record of the hearing on November 23, 1981, and the question posed by Chairman Dingell to Mr. Charles Barre' (Transcript, page 162), the interest rate was one quarter of one percentum (¼ if 1%).

Very truly yours,

JOHN S. WHITE.

Mr. DINGELL. All right. If you can give us some help on that, it would be of assistance.

[The statement follows:]

STATEMENT OF CHARLES H. BARRE ON BEHALF OF MARATHON OIL CO.

My name is Charles H. Barre. I reside in Findlay, Ohio. I am a Vice President and a Director of Marathon Oil Company. I am responsible for Marathon's refining operation.

Marathon Oil Company recognizes that the issues before your joint committee have extremely important public policy implications. For that reason, I want to be as candid and helpful as I possibly can. I hope you will appreciate that I am in a somewhat delicate position. Two competing tender offers for Marathon are outstanding; both are currently under antitrust review by the Federal Trade Commission; Marathon's antitrust suit against Mobil is pending in the Federal District Court in Cleveland; Mobil's suits to enjoin enforcement of state takeover statutes are pending in several courts; and a case filed by the Attorney General of Ohio to prohibit a Mobil takeover of Marathon as a violation of Ohio's antitrust laws is pending in the Common Pleas Court of Franklin Country, Ohio. These circumstances preclude me from commenting on certain aspects of Marathon's situation because of legal and other constraints.

With that said, let me explain to you why the Marathon directors voted unanimously to reject the Mobil bid and how that unwelcome bid dictated subsequent actions by Marathon.

While there were many reasons Marathon's Board of Directors rejected Mobil's takeover bid, we believed two were of dominant importance. First, Mobil's offer valued by them at approximately $85 per share was grossly inadequate in the opinions of both Marathon's Board and its investment bankers. Subsequent events have vindicated our judgment that Mobil's uninvited offer was an attempt to steal Marathon Oil Company for a price far below its real value. In testimony before the Federal District Court in Cleveland last Thursday, Mobil's President admitted that Mobil's financial advisers estimated that Marathon's domestic reserves alone had a value as high as $180 per share. And, of course, the value of U.S. Steel's offer far exceeds that of Mobil's attempted raid.

The second major reason for rejecting Mobil's takeover bid was the antitrust laws of this country. We are convinced that a Mobil takeover of Marathon would substantially lessen competition in our market areas in many petroleum products. It would have the same effect on all of the integrated functions of the oil industry from oil and gas exploration right through to filling a customer's gasoline tank. Marathon's directors were advised by our own as well as retained legal counsel that a Mobil takeover of Marathon would violate existing antitrust laws. We were convinced this was sound, carefully considered advice, and authorized our attorneys to take legal action accordingly.

In addition to the financial and antitrust considerations of vital concern to our shareholders, Marathon's Board also took into account very important human factors in reaching its decision to reject the Mobil offer. A horizontal combination of Mobil and Marathon could mean that a significant number of our 15,000 employees might become redundant and expendable. In addition to those facing the prospect of immediate job loss, many others faced the likelihood of impaired careers in the Mobil organizational structure. Marathon's customers—especially those independent marketers who purchase 60 percent of our output, and resell it under their own private brands—faced the prospect of disappearing from the marketplace along with Marathon. At best, they faced radically changed and less advantageous supply ar-

rangements with Mobil. As you know, Mobil has a history of refusing to supply independent marketers with unbranded product to any significant degree, and it is unrealistic to suppose that Mobil would change its style of marketing. Finally, self-serving though it sounds, Marathon's Board was seriously concerned about the impact on communities where Marathon and its people have a significant presence. The economic base and character of many communities could have been seriously damaged after Mobil's takeover.

Hopefully you can see from this overview, there were important, prudent and inescapable reasons for rejecting the Mobil bid. Mobil's hostile offer drove us to the wall. It set in motion those all-too-familiar circumstances which forced Marathon's officers and directors to take defensive measures in order to properly discharge their fiduciary responsibilities. In this respect, the Mobil bid was devastating. Existing tender offer laws and regulations with their extremely short time constraints are tilted to the distinct disadvantage of target companies.

About 60 percent of Marathon's stock is controlled by 100 or fewer entities who also have fiduciary responsibilities. They make decisions for huge blocks of stock they control for the benefit of pensions, trusts or foundations. Fiduciary responsibilities force profesional portfolio managers to maximize cash values. The Mobil offer, designed in two parts, was calculated and priced just enough above the then prevailing market price of Marathon shares to provide an irresistible quick profit opportunity. Shareholders who tendered their stock prior to Midnight last Saturday, November 21, have a preferential position in receiving the cash portion of the tender offer. This was calculated, I believe, to stampede early tenders, especially from institutions with large holdings. The other shareholders (subject to dissenting rights) would be forced to exchange their shares for a vaguely defined, long-term debt instrument which Mobil indicated would approximate the same $85 value.

I hope you can understand and appreciate the dilemma of the Marathon Board. Shareholders all have the same rights, but they have many varied and no doubt conflicting interests. In sharp contrast to the large institutional investors, there are many individual Marathon shareholders who have accumulated their shares over a period of many years with the intention of holding them for long-term investment. Yet they could be forced, if the Mobil tender offer succeeded, to exchange their shares for $85 per share in cash or debt. Their only other alternative would be to get involved in an unfamiliar legal action to have their stock appraised as provided by an Ohio law that many don't even know exists. Since none of these options were happy ones for our shareholders, Marathon's Board had no choice but to search urgently and diligently for a better deal for all our sharholders. Don't forget; it had to be done under time and many other constraints, all of which impair bargaining position.

It is a happy circumstance that U.S. Steel was actively seeking a major acquisition and diversification into the energy sector. Because of this, their management was willing and prepared to negotiate and—all factors considered—offered a fair and realistic price to Marathon's shareholders.

The major reasons that induced Marathon's Board of Directors to recommend acceptance of U.S. Steel's tender offer to its shareholders can be summarized as follows:

1. It provides Marathon shareholders a fair value for their investment in Marathon. The market price of Marathon shares had not, prior to October 30, 1981, even closely approached the price offered by U.S. Steel.

2. This diversification of U.S. Steel into a new business sector avoids the antitrust problems which would infect a Mobil/Marathon combination.

3. Marathon remains as a separate and viable corporate entity chartered in Ohio. Its management and Board of Directors are left intact to operate the company as it has been operated for many years. Its preservation in this manner does not trigger a restructuring of the oil industry.

4. The jobs and careers and future opportunities of our employees are generally unchanged.

5. Independent marketers of unbranded and private brand petroleum products are assured that their largest supplier will remain in business and continue to sustain their competitive viability.

6. The communities where Marathon is an important factor will not face difficult adjustments.

7. Marathon is preserved as a separate and powerful competitive force in the oil industry. It serves the national interest by maintaining and promoting vigorous competition.

8. Finally, it provided an escape from Mobil's ridiculously low value takeover offer and all the other problems inherent in a Mobil/Marathon shotgun wedding.

Thank you. I'll be happy now to try to answer questions you may have.

Mr. DINGELL. Gentlemen, you have helped the committees greatly. There is a vote on the floor at 1:05 at the House. We will have 5 minutes to get over there.

The Chair will recognize my good friend from Massachusetts.

Mr. MARKEY. Pass.

Mr. DINGELL. Did minority counsel have any questions they would care to raise?

Mr. CHRISTY. No, thank you.

Mr. DINGELL. Gentlemen, we are very much appreciative of your kindness to us. I suspect the staff will be in touch with you in regard to other questions we might have need of answering.

If there is no further business to come before the two committees this morning, we will stand in adjournment pending the call of the Chair.

[Whereupon, at 1 p.m., the hearing was adjourned subject to the call of the Chair.]

PROPOSED PURCHASE OF MARATHON OIL CO. BY MOBIL OIL CORP.

MONDAY, DECEMBER 14, 1981

U.S. SENATE, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION; AND HOUSE OF REPRESENTATIVES, COMMITTEE ON ENERGY AND COMMERCE,

Washington, D.C.

The committees met jointly, pursuant to call, at 9:10 a.m., in room 2123, Rayburn House Office Building, Hon. John D. Dingell (chairman of the House Committee on Energy and Commerce) presiding.

OPENING STATEMENT BY CHAIRMAN DINGELL

The CHAIRMAN.[1] The committees will come to order. We are delighted to begin proceeding, with our colleagues and friends from the Senate committee, to deal with the question of the merger policies of the petroleum industry, Mobil Corp.'s attempt to acquire Marathon Oil Co., and related questions.

We look forward with interest to our witnesses this morning who will be William Baxter, Assistant Attorney General, Antitrust Division, Department of Justice; Thomas Campbell, Director of the Bureau of Competition, Federal Trade Commission; Walter Adams, who is a distinguished professor of economics at Michigan State University; and Charles H. Barré, director and vice president of refining, Marathon Oil Co.

Our witnesses this morning will appear as a panel and I am delighted to present my cochairman and dear friend, Hon. Bob Packwood.

OPENING STATEMENT BY CHAIRMAN PACKWOOD

Senator PACKWOOD. Mr. Chairman, I had hoped that this hearing would not be necessary. But since we had our hearing in November, we have seen Mobil raise its offer to obtain the Marathon shares, appeal an adverse antitrust ruling to the court of appeals, join forces with Amerada-Hess in an attempt to repackage this in hopes of getting by the antitrust laws.

Now they have attempted to purchase 25 percent of the shares of United States Steel in what I regard as an effort to bluff United States Steel out of its offer to pick up Marathon. For me, this is a troubling series of events by a company that has shown a very high-handed attitude about acquisitions in the past.

[1] Representative Dingell was the chairman throughout this day.

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For that reason, Senator Cannon and I have introduced legislation that would impose a 1-year moratorium on acquisition of domestic oil companies by large international oil companies. This would give us time to study it further and make recommendations to Congress.

We are lucky to have two representatives from the Antitrust Division with us. As you recall they were unable to testify before us at the last hearing because the Government was shut down on the last day we had hearings. I am delighted they could come today.

I am, however, further irritated that Mobil, once more, has chosen not to come. They could not come last time because all their principal executives were involved in the acquisition plans. Now almost a month later, they cannot come again because they are all equally busy in attempting to acquire United States Steel, or whatever else they may be casting their eyes on.

Speaking as just one Senator, it does not leave a good taste in my mouth that they cannot even find the time to find some way, someone, in a large corporation, that is qualified enough to appear before us to give us some insight as to Mobil's plans.

The CHAIRMAN. Thank you, Mr. Chairman.

The Chair calls William Baxter, Assistant Attorney General; Thomas Campbell, Director of the Bureau of Competition; Walter Adams, very distinguished university professor from Michigan State; and Charles H. Barré, director and vice president of refining, Marathon Oil.

Gentlemen, if you will come forward and take your seats at the witness table we will hear you as a panel. Gentlemen, perhaps rather than delay, we can proceed, if you will each identify yourselves starting on your left and my right.

STATEMENTS OF WILLIAM F. BAXTER, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE; THOMAS CAMPBELL, DIRECTOR, BUREAU OF COMPETITION, FEDERAL TRADE COMMISSION; WALTER ADAMS, DISTINGUISHED UNIVERSITY PROFESSOR, ECONOMICS DEPARTMENT, MICHIGAN STATE UNIVERSITY; AND CHARLES H. BARRÉ, DIRECTOR AND VICE PRESIDENT OF REFINING, MARATHON OIL CO.

Mr. BARRÉ. Good morning, Mr. Chairman, I am Charles H. Barré, Marathon Oil Co.

The CHAIRMAN. Sir.

Mr. BAXTER. Mr. Chairman, I am William F. Baxter, the Assistant Attorney General for the Antitrust Division.

The CHAIRMAN. Mr. Baxter, we are happy you are with us.

Professor Adams.

Mr. ADAMS. Walter Adams, professor of economics and past president of Michigan State University.

The CHAIRMAN. By process of elimination, the Chair ascertains that probably Mr. Campbell is slightly delayed. Gentlemen, we will start I guess with Mr. Baxter, then Professor Adams and Mr. Barré. We will squeeze in Mr. Campbell when he arrives.

Gentlemen, you are each recognized, and we thank you for your assistance.

Mr. BAXTER. Mr. Chairman, I have submitted a statement which I understand will be incorporated in the record. I will not read it in its entirety unless that is your pleasure, but rather summarize it rather briefly.

We are delighted at this opportunity to discuss the current merger activity, and in particular the recent acquisitions or attempted acquisitions of so-called second-tier oil companies. For some time now we have been attempting to clarify the merger policy of the Department of Justice, and I welcome this as a further opportunity to continue that effort.

Throughout the year our approach to merger problems has, I think, been thoroughly professional, and in full accord with the statutes that we administer. We have tried not to be unduly influenced by the overall size of pending transactions, but rather to review each transaction on its merits, scrutinizing each potentially affected market for any adverse competitive effects.

Some have urged we should abandon this approach and take a more stringent attitude in the face of what has been termed by some as the current merger wave. I believe that legally we cannot do that, and that economically, we should not do that. On the contrary, it seems to me that we should, and it is my intention to continue to, scrutinize each individual transaction as it comes along, with reference to the standards set forth in section 7 of the Clayton Act. It is true, of course, that large mergers require especially careful scrutiny because their effects, be they good or bad, are likely to be large, as are the mergers themselves. But this I believe should not change our basic approach.

The starting point is of course section 7, and its requirements that a merger be regarded as unlawful where the effect may be substantially to lessen competition in an identifiable line of commerce in an identifiable geographic market. Focusing on section 7, I do not mean to suggest that section 1 of the Sherman Act, as it is and should be interpreted in light of and subsequent to section 7's passage imports any greater or lesser or different standard. I will not review with you the evolution of the case law in this area. It has been confusing, often, I think, confused. The court decisions reflect a number of quite different and often inconsistent attitudes over the years since passage of the Celler-Kefauver amendment.

The earlier cases have not explicitly been overruled by the later ones, although they certainly have been seriously undermined, and one can perceive shifting attitudes. In recent years the Supreme Court has, I think, adopted a much more sensibly and soundly based attitude toward mergers and, indeed, toward other competitive problems, more or less tracking the increasing sophistication of the industrial organization literature which has, itself, become far richer and more sophisticated since those early years when all solutions could be found in a very small number of simple, in my view, simplistic, propositions about structure and numbers and terms.

The merger enforcement policies of the Department of Justice have also followed this general evolution. As a result, the Department in recent years has concentrated its efforts on those mergers likely to affect adversely competition in some particular line of commerce. Unfortunately, the merger guidelines of the Depart-

ment of Justice published in 1968 have not kept up with this evolution.

At the time they were promulgated it was contemplated that they would be revised as necessary to take into account new developments, but that revision has never been forthcoming. At the present time the Antitrust Division is devoting substantial efforts to that reworking, and we hope that revised merger guidelines will be available fairly early in 1982.

Pending revision of the guidelines we are continuing to apply the general principles found in the most recent Supreme Court cases. We will continue to assess each transaction on its individual merits, attempting to determine as best we can with the economic learning available whether the transaction before us is one that is likely significantly to lessen competition in a particular line of commerce in any relevant geographic market.

For reasons that are not very well understood, merger activity does appear to have cyclical characteristics. The reasons for, or determinants of, that cyclicality are not well understood. Indeed, I would say not understood at all by economists. The rate of present merger activity is certainly not unprecedented, although it is high. In determining how high one should regard it, one must certainly keep in mind that inflation affects those dollar numbers as it does any others, and if levels of merger activity are put in terms of 1972 dollars, or indeed, any other vintage of dollar one might wish, the present level of activity must certainly not be regarded as unprecedented.

Nevertheless, it does seem clear that the number of mergers has been on a gradual increase since the early 1970's, starting actually about 1972. I would point out that the last and probably the greatest level of activity occurred in the period 1968-69 at a point in time when the Supreme Court was exhibiting extreme hostility and promulgating very restrictive and rigid rules against mergers. That seems to me to cast some doubt on the proposition that the level of merger activity responds in a significant way to the antitrust policies which characterize the environment at any moment in time.

Now let me turn briefly to the topic on which the committees have expressed a particular interest, the acquisitions of the so-called second-tier oil companies. I think it is extremely difficult to answer in the abstract such questions as what would happen if one or more of such companies were acquired by major oil firms or other companies. With respect to specific acquisitions I would defer to the FTC on the Marathon matter.

Perhaps it would be worthwhile for the committees if I commented briefly on the acquisition of Conoco earlier this year and our investigation of that transaction. There were in that episode, you will remember, three suitors for Conoco: Seagram, Du Pont, and Mobil. Each of the possible acquisitions required its own special analysis, and as they were announced I appointed special task forces of Antitrust Division lawyers to examine each proposed transaction.

The Seagram merger proved to pose no competitive problems at all in any market that we were able to identify, and we were able to give that proposed acquisition early termination. Our analysis of the acquisition by DuPont, the merger which eventually did take place, disclosed a serious competitive problem with respect to a

joint venture between Conoco and Monsanto, a joint venture that produced petrochemicals important in the manufacture of certain man-made fibers sold by both Monsanto and DuPont, that is, nylon and acrylic fibers.

In those fiber markets Monsanto and DuPont had a combined market share in the range of 65 to 75 percent, and we convinced ourselves without great difficulty that to have DuPont replace Conoco as Monsanto's joint venture partner in that undertaking was likely to have significant anticompetitive effects in the nylon and acrylic markets. Accordingly, we required DuPont to take appropriate remedial steps before we would allow the transaction to proceed. It did so, and thereupon, we gave the parties early termination of the Hart-Scott-Rodino waiting period.

Our analysis of the potential acquisiton of Conoco by Mobil was never completed. It was a substantial effort because these were a very large number of identifiable markets in which those two companies did meet head to head. It was necessary for us to request additional information as to some of those markets, and before we completed our study, the matter had been mooted by the successful acquisition of Conoco by DuPont.

In conclusion, Mr. Chairman, I can tell you the Department of Justice will continue to examine closely each individual transaction as it comes before us, seeking evidence of any probable anticompetitive effects in specific markets. We will adjust our efforts as necessary to enforce the antitrust laws vigorously and responsibly, and regardless of the merger rate at any particular point in time.

That concludes my prepared statement, Mr. Chairman. I would be happy to respond to any questions or perhaps you would prefer to wait until the panel has completed its presentations, as you wish.

[The statement follows:]

STATEMENT OF WILLIAM F. BAXTER, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

I am pleased to be here today on behalf of the Department of Justice to discuss current merger activity, and in particular recent acquisitions or attempted acquisitions of so-called "second-tier" oil companies. For some time now, we have been about the task of clarifying Department of Justice merger policy, and I welcome this opportunity to continue our efforts.

Our approach toward the mergers we have reviewed recently has, I hope, been thoroughly professional and in full accordance with the letter and spirit of the laws we enforce. We have taken as objective an approach as possible: we have tried not to be unduly influenced by the overall size of pending transactions, or the fact that, at least in terms of money changing hands, merger activity is greater now than it recently has been. In short, we have reviewed each transaction on its merits, scrutinizing each potentially affected market for any adverse competitive effects.

Some have argued that we should abandon this objective analysis and adopt other, more stringent approaches in the face of what is termed by some the current merger "wave." I believe that we cannot do so, and should not try to. In rejecting any per se condemnation of large mergers, however, I want to stress that we devote our most concentrated attention to them. Our premerger notification and civil investigative demand powers are substantial, and we use them as they were intended to be used. Large mergers, particularly those combining existing or potential competitors who meet in many markets, require most careful scrutiny. When we identify a potential competitive problem presented by a large merger in a particular market, we follow it through, and insist on its resolution before allowing the transaction to proceed.

With this brief overview, I would like to describe the Department's ongoing efforts to articulate current merger policy. Our starting point, of course, is the law itself.

Section 7 of the Clayton Act, which prohibits acquisitions that may substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country, is the primary statute under which mergers are judged. Section 7, as amended in 1950, and again in 1980, is the latest legislative articulation of merger standards, but in referring to section 7 I do not mean to suggest that section 1 of the Sherman Act, as it is and should be interpreted in light of section 7's passage, imports any greater, lesser, or different standards.

Section 7 requires the enforcement agencies and the courts to determine whether the particular merger or acquisition under consideration threatens to significantly lessen competition. Mergers can be categorized as "horizontal," "vertical," or "conglomerate". The common denominator in all section 7 analysis is whether the merger in question—regardless of the prior relationship of the parties—creates a significant potential for adverse horizontal effects in any specific market. This analysis requires a car ful determination of the affected market or markets and as accurate a prediction as possible of the likely effect of the proposed transaction on competition in those markets.

The evolution of the law has been confusing and often confused. In its *Brown Shoe* decision,[1] the Supreme Court emphasized the need to consider a wide variety of factors but, unfortunately, provided little if any practical guidance as to how those factors should be evaluated and weighed in reaching an ultimate conclusion. I strongly suspect that, as a result of the vagueness of that decision, judges in subsequent merger cases, after endeavoring to cope with the unstructured inquiry suggested by *Brown Shoe*, decided to place primary emphasis on simplified assumptions about the competitive effects of transactions they were called upon to review. Thus, for many years after the Supreme Court's 1963 opinion in *Philadelphia National Bank*,[2] judicial analysis was confined almost exclusively to historic data on market concentration and the market shares of the combining firms. Such analysis reflected, I believe, the static structuralism found in the economic literature of the 1930s and 1940s pertaining to competitive behavior and concentration, as well as a desire to simplify the analysis of such transactions for reasons of judicial economy.

Industrial organization literature has become far richer and more sophisticated since those early years, and it has become increasingly clear to economists and legal scholars that some overly simplified assumptions about the probable effects of mergers are now untenable. The courts, too, during the last 6 or 7 years have begun gradually to reduce reliance on a limited set of numerical formulae and to favor a broadened analysis that permits consideration of additional factors relevant to a realistic assessment of the likely competitive effects of any proposed transaction. For example, in the *General Dynamics* case,[3] the Supreme Court held that while historic market shares alone may establish a prima facie case, the inference of illegality may be rebutted by evidence that past market shares do not accurately reflect present and future competitive conditions in the relevant market. The Court has also emphasized the need for realistic market definitions, and has required credible evidence that expansion through acquisition into a market in which a firm has not previously competed actually poses a threat to competition in that market.[4]

The merger enforcement policies of the Department of Justice have generally followed the evolution of the law in this area. As a result, the Department has concentrated its efforts in recent years on those mergers most likely to affect adversely horizontal competition—mergers between existing competitors. Concomitantly, vertical and conglomerate merger cases have ceased to be a major enforcement focus. This is by no means to say, however, that every merger the Department challenges involves firms that are direct competitors, or that the Department ignores possible horizontal effects produced by mergers between firms in a vertical or conglomerate relationship to one another. Mergers may affect horizontal competition adversely even if there is no direct horizontal overlap between the parties to the transaction—for example, where potential competition is eliminated. And despite the emphasis on market share and concentration data, the Department has not ignored other factors in determining whether to challenge particular transactions.

Unfortunately, the officially published merger guidelines differ substantially from the Department's actual enforcement policies and methods of analyzing mergers. The merger guidelines were issued in 1968 to help the bar and the business community understand our then-enforcement intentions with respect to mergers and acqui-

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[1] *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962).

[2] *United States* v. *Philadelphia National Bank*, 374 U.S. 321 (1963).

[3] *United States* v. *General Dynamics Corp.*, 415 U.S. 486 (1974). See also *United States* v. *Citizens & Southern National Bank*, 422 U.S. 86 (1975).

[4] *United States* v. *Marine Bancorporation, Inc.*, 418 U.S. 602 (1974).

sitions. At that time, it was contemplated that those guidelines would be revised as necessary to take into account future developments.[5] Although the Department's enforcement policies have continued to evolve with new economic thinking and judicial interpretations of the Clayton Act, its merger guidelines have remained unchanged since they were first published.

As a result, they are now at substantial variance with the current law, with economic understanding, and with the Department's actual enforcement practices. This situation should be corrected; recent trends in merger activity emphasize the need for such corrections to be made as expeditiously as possible.

We are now devoting substantial efforts to revising the merger guidelines. Our goal is to develop a concise statement of the analysis that the Department will undertake in assessing the likely competitive effects of a merger or acquisition. Formulating a manageable set of standards to reflect our analysis is a task we consider essential if we are to provide accurate guidance as to our enforcement intentions in this area.

This process is a complicated and difficult one, and it is still too early for me to predict in detail how the revised guidelines will look. I am reluctant to risk additional and unnecessary confusion by discussing specific formulations that are under review. I can, however, describe our efforts and progress in general terms. First, we are attempting to develop definitions of product and geographic markets that, when applied, will reflect as accurately as possible the actual state of competition in those markets. We are also searching for the most helpful ways of expressing and understanding the structure of those markets, taking into account such factors as the number and size distribution of firms, including the merging firms. And we are attempting to isolate other important, relevant factors and formulate manageable standards incorporating them. Among the factors under consideration are the rate of technological change, the amount of capital which must be put at risk to enter the market, the stability of relative market shares over time, the durability and restorability of the product, and the growth rate of sales in the market in question and related markets. I hope that our revised guidelines will be of substantial assistance to the business community and the antitrust bar, and that they will deter anticompetitive mergers without unnecessarily deterring transactions that may contribute to productivity, cost reduction, and consumer welfare.

Pending revision of the guidelines, we are continuing to apply the general principles set forth in recent cases. We will continue to assess each transaction carefully and individually to determine whether it poses a threat to competition. As I have previously indicated, I believe this is a sound and responsible approach. The fact that merger activity this year has been substantial is not by itself a sufficient reason to alter our antitrust enforcement standards or to depart in any way from an accurate assessment of the effects of a given merger on competition within specific and realistically-defined markets.

For reasons that are not fully understood at this time, merger activity appears to be cyclical. The rate of present merger activity certainly is not unprecedented; some statistics indicate, for example, that the merger movement of the late 1960s was at least comparable to what we are seeing today. I might also point out that this movement occurred at a time when merger enforcement was highly visible and based on then-recent Supreme Court precedent that was highly restrictive and exhibited great hostility to mergers, both efficient and anticompetitive mergers. That fact, it seems to me, cast doubt on assertions that the present movement is attributable to merger enforcement policies of the Department of Justice.

In any event, it is clear that the intensity of merger activity is related to a variety of factors, and that any particular merger, in whatever portion of the merger cycle it may find itself, may be competitively neutral or highly procompetitive. Thus, it would be inappropriate to attack large mergers generally in response to a perceived merger trend without giving due regard to their competitive effects in individual markets. Such a generalized attack could seriously impair existing capital market mechanisms for ensuring that assets are put to their most productive use. And, indeed, the statutory language of Section 7 precludes any such generalized attack.

Before concluding, I would like to turn to a subject in which the committees have indicated their particular interest—acquisitions of so-called "second-tier" oil companies. I think it is extremely difficult to answer in the abstract such questions as what would happen if one or more such companies were acquired by major oil firms or other companies interested in diversification. With regard to specific acquisitions,

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[5] See, e.g., Department of Justice Press Release, May 30, 1968 (announcing the release of the merger guidelines).

I will defer to the FTC on Marathon, but I will comment briefly on the Conoco case, which was handled by the Department of Justice.

Our investigation of the effects of Conoco's acquisition by any of its three suitors, Seagram, du Pont, and Mobil, has been much discussed. Each of those possible acquisitions required its own special analysis; each proceeded in different directions in the search for possible adverse competitive effects. Our analysis of the acquisition by du Pont that actually took place disclosed a serious competitive problem with respect to a joint venture between Conoco and Monsanto that produced petrochemicals important in the manufacture of certain man-made fibers sold by Monsanto and du Pont. Our concern was that du Pont's succession to Conoco's interest in this joint venture might impair competition between Monsanto and du Pont in the manufacture and sale of these fibers. We required du Pont to take appropriate remedial steps before allowing the transaction to proceed, filing a Section 7 case and a consent decree to assure the preservation of competition in this market.

Our analysis of the potential acquisition of Conoco by Seagram disclosed no serious competitive problems, and we were able to grant early termination of the premerger notification waiting period applicable to that transaction. Our analysis of the potential acquisition of Conoco by Mobil was never completed. Concerned with possible competitive effects in the many, many markets in which Mobil and Conoco met, or potentially met, we issued second request letters for additional information, but had not finished digesting this information before du Pont's successful acquisition mooted the matter. We were committed to most careful scrutiny of that transaction.

In conclusion, the Department of Justice will continue to examine closely each proposed merger transaction with the utmost care, seeking evidence of any probable anticompetitive effects in specific markets. We will adjust our efforts as necessary to enforce the antitrust laws vigorously and responsibly, regardless of the rate of merger activity at any given time.

Mr. Chairman, this concludes my prepared remarks. I would be happy to address any questions you or the other members of the committees may have.

The CHAIRMAN. Mr. Baxter, the committee thanks you for a very helpful statement. The Chair observes, I believe, that Mr. Campbell has arrived, is that correct?

Mr. CAMPBELL. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Campbell, we are happy you are here. We will recognize Professor Adams, then you, and then Mr. Barré, in that order.

Mr. ADAMS. Chairman Dingell, Chairman Packwood, members of the House and Senate Commerce Committees, I am delighted to appear here this morning at your invitation. For the record, I represent neither Michigan State University, nor any party at interest in any merger proceeding. The views I present are my own and reflect my conceptions of the public interest involved in this issue.

To put the matter in contextual perspective, I shall examine three carefully propagated myths with respect to mega-mergers, in general, and major oil company acquisitions, in particular.

Myth No. 1: In our efforts to "reindustrialize" America, antitrust is a burdensome anachronism. We must face up to a tradeoff between monopoloid bigness and efficiency, on the one hand, and competition and relative inefficiency, on the other.

How valid is this alleged tradeoff in any program for reindustrializing America? For example, if our objective is to have increased oil and gas production, and to gain energy independence, how is that objective served, I submit, by Mobil's acquisition of Montgomery Ward; Arco's acquisition of the London Observer and Anaconda; Exxon's acquisition of Reliance Electric and its entry into the office equipment business; Standard of Ohio's acquisition of Kennecott Copper; the Hunt brothers' use of their oil fortune to speculate in silver?

Did these mergers—none of which was challenged under the antitrust laws—contribute a single barrel of oil or a single cubic foot of natural gas to the Nation's energy reserves? For the success of some of these ventures, I would like to submit my exhibits 1, 2, and 3 which are attached to the prepared statement. By the way, Mr. Chairman, I assume that the entire statement and the exhibits will be included in the record.[1]

The CHAIRMAN. That is entirely appropriate. Without objection, your entire statement will be inserted in the record, and you may feel free to summarize in such fashion as you wish.

Mr. ADAMS. Thank you, Mr. Chairman.

After the experience of the last two decades, does anyone have the temerity to suggest that LTV's acquisition of Jones & Laughlin, or Lykes' purchase of Youngstown Sheet & Tube, or the subsequent merger between LTV and Lykes, promoted efficiency or injected competitive vigor into a somnolent steel oligopoly? Would anyone claim that ITT's long list of acquisitions contributed a synergistic elan vital to American manufacturing? Do such mergers create new capital values, new productive facilities, new jobs, new technology, new markets?

This kind of corporate empire building, I submit, is little more than an entrepreneurial ego trip. It indicates that corporate managers—goaded by merger specialists in Wall Street's investment banking houses—are spending energy on increasing their companies' short-term profits through financial manipulation rather than increasing operating efficiency, enhancing productivity, and promoting technological progress.

It should not come as a surprise that, in 1979, U.S. corporations spent more—over $40 billion in cash—on their acquisitions and mergers than they chose to invest in research and development. They engaged in high stake games of financial razzle-dazzle, virtually untouched by the antitrust laws, largely devoid of socially redeeming advantages, and hardly calculated to accelerate the reindustrialization of America.

I do not believe that giant size, whether it is the product of a helter-skelter merger spree, is automatically conducive to the kinds of investments and innovations necessary to increase a nation's capacity to generate wealth. The fact is that the giant corporation today is as much a political as an economic institution. Without necessarily exercising market power in the diverse industries in which it may operate, it possesses the political power, by virtue of its absolute size, to influence the rules by which the competitive game is played.

Such corporations spend almost as much energy manipulating government policies for their own benefit as they do competing in the marketplace, improving productivity or planning technological breakthroughs.

Industrial giantism, whether or not accompanied by monopoly power in specific markets, tends to divert entrepreneurship from risk-taking, investment, research and development, productivity enhancement, and market expansion into efforts to manipulate the State for protectionist ends. It transforms the firm from an eco-

[1] The exhibits referred to in this statement have been retained in the committee files.

nomic organism seeking to maximize profits by excelling in the marketplace into a quasipolitical institution seeking the quiet life in orderly markets protected and guaranteed by the State.

Myth No. 2: In contrast to industries like automobiles, aerospace, and aluminum, the U.S. petroleum industry is not a concentrated industry. Therefore, neither horizontal nor vertical mergers among the major oil companies is likely to precipitate a substantial lessening of competition or a tendency to create a monopoly.

That is the statement of the myth. Now I submit, Mr. Chairman, that in fact, concentration ratios for the petroleum industry conceal more than they reveal. First of all, while the concentration of current crude oil production may be moderate, the concentration of gross reserves is considerably higher. Thus, as of 1980, the eight largest holders of petroleum liquids reserves in the United States controlled 63 percent of the estimated total reserves while the 16 largest controlled 82 percent.

Second, the major oil companies are intertwined with one another through a seamless web of interlocking control. They do not function as independent or competitive units but as cooperative entities at every strategic point in the industry's integrated structure. They are meshed with one another like strands of spaghetti in a symbiotic relationship almost inevitably precluding any genuinely competitive behavior.

Joint ventures, I submit, are one manifestation of this symbiotic relationship. There are many forms these joint ventures take. Exhibits 5 and 6 indicate how the major oil companies use joint ventures, now with one partner, then with another, in a seemingly infinite set of permutations and combinations in bidding for Federal offshore lease sales. It is a form of bid rigging which is not materially different from the kinds of explicit collusion traditionally condemned as per se violations of the Sherman Act.

The major oil companies also use joint ventures in their control of interstate pipelines which can be used and have been used as a vertical integration lever to discipline independents.

Outside the United States, the majors are also linked with each other and with foreign competitors through joint ventures extending from production through refining and, in some cases, marketing. Thus, Aramco is jointly owned by Exxon, Texaco, Standard of California, and Mobil, and in a 4-year period—1972–76—yielded its parents a profit of approximately $3.5 billion.

Caltex is a joint venture between Texaco and Standard of California. In a single year—1979—it did roughly as much business as I.T.T., or Procter & Gamble and Eastman Kodak combined; and, over the 1970–80 decade, Caltex returned to its parents an average profit of 80 percent on their equity in the venture. One can be pardoned, Mr. Chairman, for doubting that competitive rivalry would ever be allowed to intrude on such profitable intercorporate collaboration.

In all, according to one estimate, joint ventures among the oil companies provide approximately 12,000 occasions each year for ostensible competitors, namely the joint venture parents, to meet and discuss their common problems and means for resolving them. The devices are the cement for binding together a loose-knit cartel into a cozy system of mutual interdependence.

Third, as exhibit 8 suggests, the major oil companies are further bound together by a network of indirect interlocks.

Fourth, the extensive use of exchange agreements among the major oil companies not only has cemented their horizontal fraternity, but has given them a powerful weapon against their vertically nonintegrated competitors. And of course, you know, Mr. Chairman, that for years the United States has gone without a meaningful crude oil market.

Fifth, oil companies, discontent with their control over only the oil and natural gas industries, have expanded largely by merger and acquisition, into other energy industries. They have acquired coal, uranium, geothermal, and tar sands reserves to protect their oil and gas empires from interfuel competition.

Now, Mr. Chairman, this is not in my prepared statement. But I think it is appropriate to note that the Assistant Attorney General, when he was Scott Professor of Law at Stanford University, testified on a bill which would have barred the formaton of these energy conglomerates. And he doubted the possibility that an oil company might acquire an enterprise in some other energy industry, and subsequently attempt to shelter its original oil company activities from competition by failing to exploit vigorously the alternative energy source of the acquired company.

I am quoting from Mr. Baxter's testimony. And he says,

> There is absolutely no theoretical basis for supposing that such a course of action could possibly benefit the acquiring oil company, nor so far as I am aware is there a single documented case in all of industrial history of a substantial enterprise having undertaken an analogous course of action.

Now, Mr. Chairman, I would like to submit for the record an exhibit which I have marked as exhibit 11, which notes the history of the past suppression of synfuels technology by the major oil companies. And this goes back to shortly after the outbreak of World War II, that is, shortly after Pearl Harbor, in the spring of 1942.

Standard Oil of New Jersey, as Exxon was then called, pleaded nolo contendere to a Federal indictment. Part of that case was the supression of the so-called hydrogenation patents. That is, the technology for developing liquefied coal, liquefaction of coal and gasification of coal. Now you might say that that is old evidence. It goes back to 1942. Mr. Chairman, I would like to mark as exhibit——

The CHAIRMAN. Without objection, that document will be inserted in the record at the appropriate place.

Mr. ADAMS. I would like to mark as exhibit 12 a story which appeared in the Washington Post on August 11, 1981, which is a summary of a report prepared by the Canadian Restrictive Practices Commission. It was a seven-volume report based on, I think, 300,000 internal company documents.

And here is a statement made by an Exxon official with respect to synfuels technology and synfuels activity which brings the 1942 case up to date. And I quote:

> It is, therefore, desirable for Humble, that is Exxon's operating subsidiary, to do research work on shale and coal, to know where the processes are headed and thus be in a position to anticipate government moves, and be able to enter the field vigorously if commercial production commences.
>
> Humble should also encourage the government to initiate some private leasing of shale acreage but at a very restrained rate.

In the meantime, it should not itself initiate commercial production or take other actions or make announcements that would motivate other companies to initiate commercial production or even development.

It is felt that there is a fair amount of mass psychology in the industry. And that while many companies would prefer to go slow because of their domestic crude interests, or because of uncertainties about the state of development of synthetic technology, they would feel compelled to start plans if others did, and particularly so if a company with the stature of Humble did.

That comes out of the Canadian report. In other words, the major oil company executives recognized quite rationally that no man, no person, should be expected to compete with himself or herself. And it would be romantic to suppose that a major oil company which has vast crude oil properties would hasten the develoment of synthetic technology which would undermine the value of the reserves they control.

Sixth, vertical integration by the majors is the capstone of control in the petroleum industry.

I don't want to elaborate on that.

Finally, and I don't think I should have to remind the two committees of this point, the political power of "Big Oil" has profound economic consequences, inducing Government to do for the oil companies what they could not do for themselves without committing clear violation of the antitrust laws.

Historically, in war and peace, in times of crisis, real or imagined, the Government has favored the industry with official exemptions from competition.

As one cynic put it, the State Department has been the industry's law firm and the Interior Department its Washington office. No wonder the industry is sometimes depicted as a Government-sanctioned, Government-protected, and Government-subsidized cartel.

Myth No. 3: The acquisition of Marathon by Mobil itself, or in conjunction with Amerada-Hess, does not have substantive antitrust consequences.

Given the quickly moving situation one never knows what exact facts are in these bids and counter bids in this game of corporate gamesmanship. But this much we assert with confidence:

One, if Mobil were to acquire Marathon, this would kill, eliminate, assassinate, use whatever term you like, a viable, integrated competitor in an industry where entry barriers are high and where a concentrated industry structure, reinforced by noncompetitive intercorporate relationships, already interpose substantial obstacles to effective competition.

If Mobil were to acquire Marathon, and then divest some of the downstream properties to Amerada-Hess, the practical effect would be the vertical dismemberment of a major integrated oil company. Marathon would have died, would have been killed, would have been eliminated.

Point No. 2: The acquisition would lessen competition and increase concentration in the exploration for, and development of, crude oil reserves. This would be true whether or not Amerada-Hess bought the downstream properties.

Point No. 3: The acquisition would lessen competition and increase concentration in the holding of oil shale reserves and in the

development of technologies to make oil shale conversion economically feasible.

This would be true even if Amerada-Hess were eventualy to get Marathon's downstream properties and I think this is of tremendous importance in the future for the reasons I have indicated in my discussion of interfuel competition.

Fourth, the acquisition would trigger a spate of similar acquisitions by other major, integrated oil companies.

This is not a matter of speculation. Gulf has reportedly arranged for $5 billion, Texaco for $5.5 billion, Pennzoil for $2.5 billion, Cities Service for $1 billion line of credit for this purpose.

Finally, No. 5, the acquisition would have serious vertical consequences by denying independent marketers access to a vital supply of refined products.

This part of the industry, nonintegrated refiners and marketers, are probably the greatest force for competition. If Amerada-Hess were to inherit the present refining and marketing facilities there is no assurance it would continue Marathon's policy of being an important supplier to nonintegrated marketers.

Finally, No. 6, the acquisition would, without doubt, substantially lessen competition in the sale of gasoline in several relevant markets, including Michigan, Illinois, Wisconsin, and Tennessee.

If Amerada-Hess were to take over Marathon's marketing facilities this anticompetitive consequence would probably be lessened or eliminated.

In considering the foregoing consequences of the proposed Mobil/Marathon union, it is well to remember the congressional purpose in enacting the Celler-Kefauver law.

It was to stem the rising tide of concentration; to prevent concentration in its incipiency, that is, before this flowered into a major monopoly problem; and to prevent not only horizontal, but also vertical and conglomerate acquisitions which lessen competition or tend toward monopoly.

The petroleum industry, given its horizontally and vertically integrated structure and the pervasively cooperative relationship among its leading firms, seems to be precisely the kind of industry in which Congress sought to have the Celler-Kefauver strictures applied.

It seems to be the kind of industry in which a Mobil/Conoco or a Mobil/Marathon merger would inevitably lessen competition and exacerbate a rising trend toward concentration.

In conclusion, Mr. Chairman, I think it is a supreme irony that decontrol of the petroleum industry was supposed to provide the major oil companies with the incentives and resources to search for new oil and gas reserves.

Yet, these giants continue to divert sizeable portions of their massive cash flows into mergers and acquisitions. They continue to bid for existing oil and gas reserves.

They continue to build energy conglomerates by buying existing coal, shale, and uranium properties.

They continue to invest in assets totally unrelated to the oil and gas business.

Such misdirection of corporate energies is not—to paraphrase an old saw—part of the solution. It is a big part of the problem.

It is no less ironic that the American steel industry for the last 20 years has demanded Government protection from foreign competition ostensibly to generate sufficient investment capital to replace and modernize its antiquated plants and equipment.

Such modernization, the industry claimed, was imperative if it were to compete on even terms with its advanced Japanese and European rivals.

Yet, United States Steel, a technological laggard in this technologically lethargic industry (see my exhibits 9 and 10), somehow finds $6.3 billion—not for new BOF's or continuous casting machines or greenfield steel plants, but $6.3 billion to buy the 17th largest U.S. oil company. It invests in an industry to which it brings monumental inexperience.

I respectfully submit that public policy which tolerates such conduct by its corporate giants is calculated to achieve not innovation but stagnation—not the "reindustrialization" of America but a progressive marasmus of its industrial might.

What then can be done? As a first step, designed to bring the current merger mania to an abrupt end, the Congress might mandate a moratorium along the lines suggested in the bill sponsored by Congressman Brown of Ohio, and S. 1916, as amended, by Senators Packwood and Cannon.

However, that moratorium should apply not only to the major oil companies but to all corporations on the Fortune list of the 500 largest industrials.

Beyond that, I would favor legislation which would bar mergers and acquisitions by any Fortune 500 company, unless it can make an affirmative showing, and the burden of proof would be on the company, that the proposed merger, (1) would not substantially lessen competition or tend to create a monopoly in any line of commerce; (2) would enhance the operational efficiency of the acquired firm; and (3) promote technological progress not otherwise achievable.

I submit that the application of such standards would preserve the independence of firms like Marathon which are endowed with adequate resources and competent management, and which are big enough to stand on their own feet.

The time has come, I believe, to help American industry recapture its historic preeminence by redirecting its talent into the adventure of entrepreneurship and risk-taking—the building of new factories, the creation of new jobs, the development of new technologies.

The time has come to stop rearranging the deck chairs on the *Titanic*.

Thank you very much.

[The statement follows:]

STATEMENT OF DR. WALTER ADAMS, DISTINGUISHED UNIVERSITY PROFESSOR, PROFESSOR OF ECONOMICS, AND PAST PRESIDENT, MICHIGAN STATE UNIVERSITY

Chairman Dingeli, Chairman Packwood, Members of the House and Senate Commerce Committees: I appear here this morning at your invitation to comment on the various proposals to acquire Marathon, the 17th largest oil company and the 39th largest corporation in the United States. I represent neither Michigan State University, nor any party at interest in any merger proceeding. The views I present are my own and reflect my conceptions of the public interest involved in this issue.

To put the matter in contextual perspective, I shall examine three carefully propagated myths with respect to mega-mergers, in general, and major oil company acquisitions, in particular.

Myth No. 1: In our efforts to "reindustrialize" America, antitrust is a burdensome anachronism. We must face up to a tradeoff between monopoloid bigness and efficiency, on the one hand, and competition and relative inefficiency, on the other.

How valid is this alleged tradeoff in any program for reindustrializing America? Are giant mergers, especially conglomerate mergers, the necessary means toward that end? If, for example, we posit increased oil and gas production and energy independence as a national goal, how is that objective served by Mobil's acquisition of Montgomery Ward; Arco's acquisition of The London Observer and Anaconda; Exxon's acquisition of Reliance Electric and its entry into the office equipment business; Standard Oil of Ohio's acquisition of Kennecott Copper; Getty's projected entry into home box office television; or the use of the Hunt brothers' oil fortune to speculate in silver? Did these mergers—none of which was challenged under the antitrust laws—contribute a single barrel of oil or a single cubic foot of natural gas to the nation's energy reserves? (For the "success" of some of these ventures, see attached exhibits 1, 2, and 3.) [1]

After the experience of the last two decades, does anyone have the temerity to suggest that LTV's acquisition of Jones and Laughlin, or Lykes' purchase of Youngstown Sheet and Tube, or the subsequent merger between LTV and Lykes, promoted efficiency or injected competitive vigor into a somnolent steel oligopoly? Would anyone claim that I.T.T.'s acquisition of Avis or NBC's purchase of Hertz enhanced competition or increased managerial efficiency in the car rental industry? Is there any evidence that the acquisition by I.T.T., once a quiet international public utility, of Continental Baking Company (the largest bread company in the United States), Sheraton (the largest hotel/motel chain), Levitt Brothers (the largest home builders), Hartford Insurance, etc., contributed a synergistic elan vital to American manufacturing? Do such mergers create new capital values, new productive facilities, new jobs, new technology, new markets?

This kind of corporate empire building, I submit, is little more than an entrepreneurial ego trip. It indicates that corporate managers—goaded by merger specialists in Wall Street's investment banking houses—are spending energy on increasing their companies' short-term profits through financial manipulation rather than increasing operating efficiency, enhancing productivity, and promoting technological progress. It should not come as a surprise that, in 1979, U.S. corporations spent more (over $40 billion in cash) on their acquisitions and mergers than they chose to invest in research and development. (For a perspective on the oil industry's R&D expenditures, see Exhibit 4.) They engaged in high stake games of financial razzle-dazzle, virtually untouched by the antitrust laws, largely devoid of socially redeeming advantages, and hardly calculated to accelerate the reindustrialization of America.

Giant size, especially when it is the product of a helter-skelter merger spree, is not automatically conducive to the kinds of investments and innovations necessary to increase a nation's capacity to generate wealth. Without more size per se guarantees neither efficiency nor technological progressiveness. The fact is that the giant corporation, especially when it reaches late middle age, becomes as much a political as an economic institution. Without necessarily exercising market power in the diverse industries in which it may operate, it possesses the political power, by virtue of its absolute (rather than relative) size, to influence the rules by which the competitive game is played. It tends to spend almost as much energy manipulating government policies for its own benefit as it does competing in the marketplace, improving productivity, or planning technological breakthroughs. It seeks governmental favors, subsidies, and privileges. It pleads for relief from "onerous" burdens like clean air, pure water, industrial safety, and energy conservation regulations. Above all, it expects the government to compensate it for its own mistakes which, given the firm's giant size, are likely to be of gigantic proportions. The result is, more often than not, government bailouts—whether in the form of protection from import competition or in the form of protection from bankruptcy—and such bailouts are seemingly becoming standard operating procedure in the U.S. economy.

Industrial giantism, whether or not accompanied by monopoly power in specific markets, is not benign and therefore cannot be ignored. At the very least, it breeds an arrogance of power which ultimately causes those who wield it to lose touch with reality—to their own detriment and the detriment of the society they are supposed to serve. It also tends to divert entrepreneurship from risk-taking, investment, re-

[1] The exhibits referred to in this statement have been retained in the committee files.

search and development, productivity enhancement, and market expansion into efforts to manipulate the state for protectionist ends. It transforms the firm from an economic organism seeking to maximize profits by excelling in the marketplace into a quasipolitical institution seeking the quiet life in "orderly markets" protected and guaranteed by the state.

Myth No. 2: In contrast to industries like automobiles, aerospace, and aluminum, the U.S. petroleum industry is not a concentrated industry. Therefore, neither horizontal nor vertical mergers among the major oil companies is likely to precipitate a substantial lessening of competition or a tendency to create a monopoly.

In fact, concentration statistics for the petroleum industry conceal more than they reveal. First, while the concentration of current crude oil production may be moderate, the concentration of gross reserves is considerably higher. Thus, as of 1980, the eight largest holders of petroleum liquids reserves in the United States controlled 63 percent of the estimated total reserves while the 16 largest controlled 82 percent. And, this concentration of control over reserves is more important, particularly for the future, than the concentration in current crude oil production.

Second, the major oil companies are intertwined with one another through a seamless web of interlocking control. They do not function as independent or competitive units but as cooperative entities at every strategic point in the industry's integrated structure. They are meshed with one another like strands of spaghetti in a symbiotic relationship almost inevitably precluding any genuinely competitive behavior.

Joint ventures are one manifestation of this symbiotic relationship. A joint venture establishes a community of interest among the parents and a mechanism for avoiding competition between them. The mechanism provides an opportunity for foreclosing nonpartners from access to supplies and/or from access to markets and serves as a forum in which ostensible competitors can meet to exchange information and coordinate plans with apparent impunity.

Exhibits 5 and 6 indicate how the major oil companies use joint ventures, now with one partner, then with another, in a seemingly infinite set of permutations and combinations, in bidding for federal offshore lease sales. It is a form of bid rigging which is not materially different from the kinds of explicit collusion traditionally condemned as per se violations of the Sherman Act.

The major oil companies also use joint ventures in their control of interstate pipelines (see exhibit 7) which can be used and have been used as a vertical integration lever to discipline independents.

Outside the United States, the majors are also linked with each other and with foreign competitors through joint ventures extending from production through refining and, in some cases, marketing. Thus, Aramco is jointly owned by Exxon, Texaco, Standard of California and Mobil, and in a four-year period (1976–79) yielded its parents a profit of approximately $3.5 billion. Caltex is a joint venture between Texaco and Standard of California. In a single year (1979) it did roughly as much business as IT&T, or Procter & Gamble and Eastman Kodak combined; and, over the 1970–80 decade, Caltex returned to its parents an average profit of 80 percent on their equity in the venture. One can be pardoned for doubting that competitive rivalry would ever be allowed to intrude on such profitable intercorporate collaboration.

In all, according to one estimate, joint ventures among the major oil companies provide approximately 12,000 occasions each year for ostensible competitors, the joint venture parents, to meet and discuss their common problems and means for resolving them. The devices are the cement for binding together a loose-knit cartel into a cozy system of mutual interdependence.

Third, as exhibit 8 suggests, the major oil companies are further bound together by a network of indirect interlocks. With the exception of Gulf and Socal, as John Blair has observed:

All of the eight largest oil companies were interlocked in 1972 through large commercial banks with at least one member of the top group. Exxon had four such interlocks—with Mobil, Standard (Ind.), Texaco, and ARCO. Mobil had three (with Exxon, Shell, and Texaco), as did Standard of Indiana (with Exxon, Texaco, and ARCO), as well as Texaco (with Exxon, Mobil, and Standard of Indiana). ARCO was interlocked with Exxon and Standard (Ind.), and Shell with Mobil.

At the very least, Blair concluded, "meeting together presents directors of competing companies with potential conflicts of interest."

Fourth, the extensive use of exchange agreements among the major oil companies not only has cemented their horizontal fraternity, but has given them a powerful weapon against their vertically nonintegrated competitors. For years the United States has gone without a meaningful crude oil market. Most crude oil is bought and sold under exchange agreements by which the buyer of x barrels of crude oil for

his refinery at a particular location agrees to deliver an equivalent amount to the seller at another location. Walter Measday has pointed out that such exchange agreements "replace a competitive market with a network of bilateral or multilateral barter transactions from which nonintegrated firms can be easily excluded as first purchasers of crude and which, by their very nature, must be less efficient allocators of resources than open markets would be."

Fifth, oil companies, discontent with their control over only the oil and natural gas industries, have expanded, largely by merger and acquisition, into other energy industries. They have acquired coal, uranium, geothermal, and tar sands reserves to protect their oil and gas empires from interfuel competition.

The impact of these incursions by the major oil companies into the domain of substitute fuels is not difficult to conjecture. After all, no man can be expected to compete with himself, nor can any man be expected to serve two masters and be equally loyal to each. As Walter Measday has observed:

"Would Continental Oil encourage price and market competition between [its subsidiary] Consolidation Coal and its traditional oil operations? Would Union Oil push geothermal development in an area where it might cut into the market for Union's fuel oil? The question extends to the exploitation of successful R. & D. According to Senator Bartlett (R., Oklahoma), 49 of 52 patents relating to coal gasification or liquefaction issued from 1964 to 1974 went to oil companies. Let us make the highly unlikely assumption that an oil company with extensive foreign investments were to achieve a technological breakthrough which could make the United States self-sufficient in energy. Would Exxon enjoy telling Sheik Yamani or would Occidental inform Col. Qadaffi that no more Saudi Arabian or Libyan oil would be lifted for the U.S. market? Or would there be some temptation to delay exploitation of the technology until 'it's really needed'?"

Such considerations point up the need to protect interfuel competition from further erosion by energy conglomerates.

Sixth, vertical integration by the majors is the capstone of control in the petroleum industry. As the mechanism for harnessing and transmitting market power through the successive stages of production, refining, and marketing, vertical integration constitutes the primary barrier to new competition. Specialized firms at any one stage of the industry must live at the sufferance of the integrated majors—vulnerable to the constant threat of price squeezes, the denial of supply, and the foreclosure from markets. The very fact of vertical integration, therefore, militates against workable competition in the petroleum industry and relegates competition to the interstices and fringes of the marketplace.

Finally, the political power of Big Oil has profound economic consequences, inducing government to do for the oil companies what they could not do for themselves without committing clear violations of the antitrust laws. Historically, in war and peace, in times of crisis, real or imagined, the government has favored the industry with official exemptions from competition. As one cynic put it, the State Department has been the industry's law firm and the Interior Department its Washington office. No wonder the industry is sometimes depicted as a government-sanctioned, government-protected, and government-subsidized cartel.

Myth No. 3: The acquisition of Marathon by Mobil itself, or in conjunction with Amerada-Hess, does not have substantive antitrust consequences.

Constant change in the configuration of events—bids and counterbids in an unproductive spectacle of corporate gamesmanship—make it difficult to predict the precise consequences of the proposed Mobil/Marathon marriage. This much, however, can be stated with confidence:

(1) The acquisition would mean the death of Marathon—a viable, integrated competitor in an industry where entry barriers are high and where a concentrated industry structure, reinforced by noncompetitive intercorporate relationships, already interpose substantial obstacles to effective competition. If Mobil were to acquire Marathon, and then divest certain downstream properties to Amerada-Hess, the practical effect would be the vertical dismemberment of a major integrated oil company and thus result in the destruction of a major integrated rival.

(2) The acquisition would lessen competition and increase concentration in the exploration for, and development of crude oil reserves. This would be true even if Amerada-Hess were to inherit Marathon's downstream properties.

(3) The acquisition would lessen competition and increase concentration in the holding of oil shale reserves and in the development of technologies to make oil shale conversion economically feasible. This would be true even if Amerada-Hess were eventually to get Marathon's downstream properties.

(4) The acquisition would trigger a spate of similar acquisitions by other major, integrated oil companies. Already, Gulf has reportedly arranged for a $5 billion,

Texaco for a $5.5 billion, Pennzoil for a $2.5 billion, and Cities Service for a $1 billion line of credit for this purpose. The cummulative effect of a Mobil acquisition of Marathon would almost inevitably trigger yet another round of mergers with the predictable result of further reducing competition and further increasing concentration in the petroleum industry.

(5) The acquisition would have serious vertical consequences by denying independent marketers access to a vital supply of refined products. As Judge Manos recently found (U.S. District Court for the Eastern District of Ohio), "50 percent of Marathon's total gasoline sales are made to over 1100 independent businesses which resell at wholesale of retail prices. Approximately 60 percent of all gasoline sold by Marathon is eventually resold at retail prices that are generally several cents below that sold by Mobil in branded outlets." By contrast, Mobil has long maintained a policy of not selling gasoline to private brand retailers (who are a significant procompetitive force in the industry), nor has it generally sold its branded gasoline at prices below those of other major oil company brands. If Amerada-Hess were to inherit the erstwhile refining and marketing facilities of Marathon, there is no assurance that it would continue Marathon's policy of being an important supplier to non-integrated marketers.

(6) The acquisition would without doubt substantially lessen competition in the sale of gasoline in several relevant markets, including Michigan, Illinois, Wisconsin, and Tennessee. If Amerada-Hess were to take over Marathon's marketing facilities this anticompetitive consequence would probably be lessened or eliminated.

In considering the foregoing consequences of the proposed Mobil/Marathon union, it is well to remember the Congressional purpose in enacting the Celler-Kefauver law. It was to stem the rising tide of concentration; to prevent concentration in its incipiency, i.e. before it has flowered into a major monopoly problem; and to prevent not only horizontal, but also vertical and conglomerate acquisitions which lessen competition or tend toward monopoly. The petroleum industry, given its horizontally and vertically integrated structure and the pervasively cooperative relationship among its leading firms, seems to be precisely the kind of industry in which Congress sought to have the Celler-Kefauver strictures applied. It seems to be the kind of industry in which a Mobil/Conoco or a Mobil/Marathon merger would inevitably lessen competition and exacerbate "a rising trend toward concentration."

CONCLUSION

It is a supreme irony that decontrol of the petroeleum industry was supposed to provide the major oil companies with the incentives and resources to search for new oil and gas reserves. Yet these giants continue to divert sizable portions of their massive cash flows into mergers and acquisitions. They continue to bid for existing oil and gas reserves. They continue to build energy conglomerates by buying existing coal, shale, and uranium properties. They continue to invest in assets totally unrelated to the oil and gas business. Such misdirection of corporate energies is not—to paraphrase an old saw—part of the solution. It is a big part of the problem.

It is no less ironic that the American steel industry for the last 20 years has demanded government protection from foreign competition ostensibly to generate sufficient investment capital to replace and modernize its antiquated plants and equipment. Such modernization, the industry claimed, was imperative if it were to compete on even terms with its advanced Japanese and European rivals. Yet, U.S. Steel, a technological laggard in this technologically lethargic industry (see exhibits 9 and 10), somehow finds $6.3 billion—not for new BOF's or continuous casting machines or greenfield steel plants, but $6.3 billion to buy the 17th largest U.S. oil company. It invests in an industry to which it brings monumental inexperience.

I respectfully submit that public policy which tolerates such conduct by its corporate giants is calculated to achieve not innovation but stagnation—not the "reindustrialization" of America but a progressive marasmus of its industrial might.

What then can be done? As a first step, designed to bring the current merger mania to an abrupt end, the Congress might mandate a moratorium along the lines suggested in the bill sponsored by Congressman Brown of Ohio and S. 1916 (as amended) sponsored by Senators Packwood and Cannon. However, that moratorium should apply not only to the major oil companies but to all corporations on the Fortune list of the 500 largest industrials.

Beyond that, I would favor legislation which would bar mergers and acquisitions by any "Fortune 500" company, unless it can make an affirmative showing, and the burden of proof would be on the company, that the proposed merger (1) would not substantially lessen competiton or tend to create a monopoly in any line of com-

merce; (2) would enhance the operational efficiency of the acquired firm; and (3) promote technological progress not otherwise achievable.

I submit that the application of such standards would preserve the independence of firms like Marathon which are endowed with adequate resources and competent management, and which are big enough to stand on their own feet.

The time has come, I believe, to help American industry recapture its historic preeminence by redirecting its talent into the adventure of entrepreneurship and risk-taking—the building of new factories, the creation of new jobs, the development of new technologies.

The time has come to stop rearranging the deck chairs on the *Titanic*.

The CHAIRMAN. Professor Adams, the committees thank you.

Mr. Campbell, we will recognize you next.

Mr. CAMPBELL. Thank you, Chairman Dingell, Chairman Packwood.

I have a few apologies to begin with. First, I am sorry I was late. It was a transportation problem occasioned by my lack of knowledge that this would be a panel. I am sorry for that.

Second, you invited me up here November 23 and I was unable to appear because we ran out of money on that day. I surely wanted to appear. The earlier I could get to speak with you, the better.

I just hope that my communicating with your staffs has in some way made up for that failing.

A final apology. You have my testimony as drafted for November 23. I would like this morning to give a verbal update. There is no written update because of the fast moving nature of these events. Indeed, had I attempted one as of Friday, it would have been moot.

The CHAIRMAN. That is entirely appropriate. Without objection, we will insert the whole of your earlier testimony in the record and recognize you for such additional comments as you choose to make.

Mr. CAMPBELL. Thank you, Mr. Chairman.

Perhaps the most important fact to keep in mind right now for update purposes is that the Sixth Circuit Court of Appeals has consolidated the two cases, one brought in Columbus, one brought in Cleveland; the one before Judge Manos, which involves the antitrust concern, and the other which involves the challenge under the Securities Acts and corporate law to the options that are available to United States Steel in regard to Marathon.

Both of those points are now before the sixth circuit, and they will be heard next Thursday. A stay is in effect imposed by the sixth circuit, and neither company may consummate its attempted merger until that time.

Last Tuesday, December 8, the Federal Trade Commission authorized its general counsel to bring a complaint before the appropriate Federal district court in regard to the Mobil and Marathon merger.

The complaint reflects the work of the Bureau of competition which had outlined certain geographical product markets. The product market we focused upon is wholesale gasoline, and the provision of wholesale petroleum products other than gasoline as well, such as No. 1 and No. 2 fuel oil and kerosene.

In this market we have identified overlaps between Mobil and Marathon within 18 standard metropolitan statistical areas.

In 8 of those 18, the overlap is 25 percent, and in 10 it is 30 percent or more. The product market in each of these petroleum distil-

lates makes sense from an economic point of view as defined within a geographic market which is a little bit complex. So I would like to take a moment to explain. Whereas we use standard metropolitan statistical areas and whereas we use data on State concentrations, the geographic market that we address is something called a terminal cluster area and this draws upon the fact that the distribution and marketing of all of these petroleum products requires large terminals around a standard metropolitan statistical area.

Whereas all of the terminals around a particular area might not supply exclusively that area, we can define a reasonable, helpful geographic market by reference to that standard metropolitan statistical area.

With that qualification, what we are addressing raises concerns under section 7 of the Clayton Act. Not only because of the terminals, but also because of the overlap in pipeline. Between these two companies the overlapping pipeline is not so great as their overlap in terminals. Nevertheless, our analysis indicates that the overlapping pipeline is sufficient that, within the Midwestern area where the standard metropolitan statistical areas are located, the potential for diminishing competition will be augmented.

Finally, I should focus on the wording of what the Commission has ordered our General Counsel to plead, and what our pleading will show before Judge Manos. The Commission's concern and the Commission's identification of the problem has focused upon the marketing, transportation, and terminating of these petroleum products.

This is not to say we have no other concern about the vertical aspects of the petroleum process. We surely do.

What it is to say, though, is that the Commission has identified antitrust problems that rise to the level of a Clayton Act violation on a standard of "reason to believe." In those markets, should those assets which Marathon has and which Mobil will be acquiring, be divested, we would not be satisfied that our antitrust concerns had been taken care of until and unless we were convinced that whatever new body has those marketing, transportation, and terminaling assets would be viable in all relevant markets.

And viability in this context directly means access to crude oil and access to all of the other steps of petroleum distribution in what is called the upstream.

I stress this, Mr. Chairman, Chairman Packwood, because there is a possibility of misunderstanding perceived by me in some of my briefings.

I wish to make it quite clear, there is no misunderstanding on the Commission's part. We seek to enjoin this merger. But the Commission has been careful. It has specified precisely where the problem is that it sees.

I should note in closing on this topic that the Comission has made no judgment at all on Amerada-Hess or any other potential recipient of the downstream assets.

That aspect is under close scrutiny.

Finally, I would like to stress to the committees that my perception of the most important information I can communicate to the committees is how I will go about discharging my obligations under law in the Bureau of Competition so that if you believe there is

some important objective to be served which I am not serving, that you be aware of that.

And I am speaking specifically of the fact that the antitrust laws do not address all of the concerns that have been voiced to me in regard to this merger or in regard to concentration generally.

I will enforce the antitrust laws to the best of my ability and obviously the Commission always has and shall continue to do so. But there are also concerns of aggregate concentration, or employment effects in particular geographic areas, or of other political and social import which I do not belittle in the slightest, but which I confess to the committees are not being addressed because in my judgment they do not come under the purview of the antitrust laws.

Having told you that, I believe I have discharged my obligation to alert the committees to what the objectives are of the Bureau of Competition and, at the same time, signal, perhaps, where the committees may seek additional legislation.

The CHAIRMAN. Mr. Campbell, at the risk of intruding into your time here, would you proceed to elaborate on the points just raised, and describe the questions that you now address, please?

Mr. CAMPBELL. I would be glad to, Mr. Chairman. As it happens that was the end. I didn't have anything prepared. I was just speaking as I thought you needed to hear right now. Aggregate concentration.

The doctrine of potential competition is the only tool that we have for analyzing mergers in a conglomerate sense. Namely, does one company which is not directly competing with another company represent a potential entrant? And if that is not the case, then I do not know of an antitrust vehicle that we have for addressing that merger.

Nevertheless, there might be aggregate concentration increase among the top few companies of the United States. If the committees, for social or political or any other important reason, view an increase in aggregate concentration with concern, then I would focus upon that to the committees and inform them that beyond the possibility just expressed, they are not being handled under the current existing antitrust laws.

The other point that I make, Mr. Chairman, is that one hears in regard to this particular merger of the possible upset to a particular geographic region, particularly where Marathon Oil Co. has its headquarters.

I view these with great concern. I do not belittle them. It is important for many reasons that we keep viable companies in dispersed geographic areas. But in honesty, these are not antitrust concerns.

Judge Manos, who heard the case brought by Marathon and ruled in Marathon's favor, ruled evidence going to the employment effect in and around Marathon's headquarters as irrelevant for his antitrust case.

And, again, if the committees have concern about these factors, and I do not belittle them, I try to discharge my obligation to alert you to the fact that I do not pretend to see those and do not see those as part of the antitrust laws.

The CHAIRMAN. Thank you.

Does that conclude your statement, sir?
Mr. CAMPBELL. It does, Mr. Chairman.
[The statement follows:]

STATEMENT OF THOMAS J. CAMPBELL, DIRECTOR, BUREAU OF COMPETITION, FEDERAL TRADE COMMISSION

I am grateful for your invitation to speak this morning. I understand that the purpose of this hearing is to discuss the issue of Mobil's proposed takeover of Marathon. This opportunity will also allow me to describe some of the process in which the Federal Trade Commission and its Bureau of Competition have been involved regarding Mobil's bid to acquire Marathon.

As the House Subcommittee, chaired by Congressman Dingell, has already obtained all of our documents relative to the Mobil/Marathon case, I refer the Committee to any particulars that may be contained in those documents which would describe the Mobil/Marathon proceedings with more particularity. Since I am speaking on the public record, and since the proposed acquisition of Marathon is in a state of flux, both before a federal court and with regard to speculation on the stock exchanges, and since not all of the evidence has been received or analyzed, it would not be appropriate for me to speculate as to what course of action might be recommended by the Bureau of Competition. As the Committees are well aware, nothing I may do or say will bind the Commission or the individual Commissioners. It is the decision of the Commission which will direct the course of action which I, as an employee of the Commission, will carry out. Nevertheless, financial markets might be affected by my public comments on the antitrust issues, so in these written, prepared remarks, I will limit my discussion to matters of Commission procedure and the events of this case.

When Mobil announced its intention to acquire Marathon, attorneys in the petroleum energy division of the Bureau of Competition at once began to analyze this case for possible antitrust violations, having reached agreement with the Department of Justice that the matter should be handled by the Federal Trade Commission rather than the Department of Justice. Early contact was established with Marathon to solicit their assistance with respect to the antitrust issues involved in this case.

Shortly thereafter, based on advice of representatives of the Bureau of Competition and the Bureau of Economics, I decided to recommend to Chairman Miller that he sign what is called a second request to both Mobil and Marathon, as spelled out under the Hart-Scott-Rodino Act.

Let me take a moment to describe the relevant procedures under the Hart-Scott-Rodino Act. Where a company the size of Mobil proposes an acquisition of a company the size of Marathon, the acquiring company must supply certain information to the Federal Trade Commission and the Department of Justice. Where the proposed acquisition is to be accomplished by a cash transaction, the Federal Trade Commission (in this case) has 15 days within which to decide whether more information is needed. If such a determination is made, then a "second request" is issued for that information. The acquiring company may not proceed by law to consummate the merger until it has complied with that second request and 10 additional days have run.

I had informed the Chairman of the likelihood of this second request before he left Washington to visit the West Coast regional offices, and kept in touch with his personal staff while the request was being prepared. The second request was signed when the Chairman returned to the office on November 3.

Early on in this process, but after I had approved the second request, for the Chairman's approval, I was contacted by Mobil Oil Corporation's Washington representative, indicating that Mobil wished to meet with me concerning a proposal that might address our antitrust concerns. My staff and I met with several representatives of Mobil the next day. I made it clear to Mobil from the start that whatever offer they might wish to discuss would proceed no further with me or with the Commission unless it had been fully reviewed by Marathon, once it had been proposed in concrete form.

Mobil eventually suggested a firm hold separate proposal, permitting mobil to acquire the stock of Marathon, but not to merge the Marathon assets until six months had run. During the six-month period, the Federal Trade Commission would have access to all information which it needed from Mobil, and could then decide whether to proceed with an antitrust case. I instructed my staff to show Mobil's offer to Marathon, as soon as it had been put in written form, and to ask Marathon and the independent gasoline retailers to meet with me to present their side of the antitrust

issues in general, and the advisability and workability of the hold spearate proposal in particular.

In response to my invitation, representatives of Marathon and the independent gasoline marketers met with me to provide critical comment on the hold separate proposal. Their position was, essentially, that despite the terms of the proposal, Marathon could not operate independently once Mobil owned a controlling interest of its stock. Important opportunities would be lost, employees with better offers would leave, gasoline purchasers would seek other suppliers, and, if an eventual spin-off were ordered, it would take years to place all the Marathon stock and re-create a separate company. This information was very helpful to me in my effort to develop all possible options for the Commission to consider. It is one of my functions, in matters such as these, to prepare all options for the Commission, while not delaying the preparation of preliminary injunction papers, should the Commission choose to pursue that route. Late in the week I provided copies of Mobil's proposal to the individual Commissioners for their information.

I have subsequently met again, by my request, with Marathon's attorneys, and Mobil's attorneys. In each case, our discussions dealt with the antitrust issues of the Mobil/Marathon matter and not exclusively with the hold separate proposal. My staff attorneys have stayed in close contact with counsel for Marathon, Mobil and the independents throughout this proceeding. I stand ready, of course, to meet with any other relevant party so as to be better informed in what advice I give to the Commission.

There are three courses the Commission might, theoretically, follow in this case. The first would be to file for a preliminary injunction, in all likelihood before Judge Manos in the United States District Court in Cleveland. The second would be to take no action opposing the merger. The third would be in the event that we have insufficient evidence for a preliminary injunction, but sufficient concern about the possibility that this proposed merger would violate the antitrust laws, to continue to proceed with the possibility of an administrative complaint. If the third choice is taken, then the Commission might agree that a hold separate proposal should be accepted to prevent the actual unification of the two companies until the Commission has had time to complete its action, while recognizing that a hold separate agreement has serious disadvantages from Marathon's viewpoint.

I have not presented the Federal Trade Commisison with my recommendations for final action in this case. I can assure the Committees that my recommendation will be based on the soundest principles of antitrust law, as handed down by the Supreme Court of the United States, and with proper reflection for the very important concerns for energy independence, survivability of independent gasoline marketers, and the general welfare of the American consumer, both nationally and in specific regional markets. When I am confident on one of the three courses of action, based upon the evidence submitted, I shall bring that recommendation to the Commission and urge its adoption. But the ultimate decision is for the Commission to make.

As the Committees are aware, I have provided private briefings on this matter, including discussion of the applicable issues of antitrust law, to the staffs of the Senate Commerce Committee, the House Commerce Committee, the Senate Judiciary Committee, and to members of the Ohio Congressional Delegation as well, at a meeting courteously arranged by Congressman Oxley. Rather than placing my discussion of the antitrust issues in my written statement, in view of the possible effect on the financial markets my remarks on that subject may have, permit me to address that topic by responding to any additional questions members of the Committees may still wish to pose. I would now welcome any questions that the members may wish, and I again thank you for the opportunity to present in a single forum the course of events in this important matter.

The CHAIRMAN. Thank you. Mr. Barré.

Mr. BARRÉ. Chairman Dingell, Chairman Packwood, thank you very much.

I have prepared and filed a statement entitled "A Chronology of Important Events in the Mobil and U.S. Steel Tender Offers from October 30 through December 11, 1981." I think it will speak for itself, and I have no further prepared remarks.

The CHAIRMAN. Without objection, we will insert that into the record.

[The statement follows:]

STATEMENT OF CHARLES H. BARRÉ ON BEHALF OF MARATHON OIL CO.

A CHRONOLOGY OF IMPORTANT EVENTS IN THE MOBIL AND U.S. STEEL TENDER OFFERS—1981

Oct. 30—Announcement of Mobil Tender Offer—40 million Marathon shares at $85 each with a proposed merger calling for 30 year debentures (terms not specified but represented to be valued at $85 each) for balance of stock. Phone call from Rawleigh Warner of Mobil to H. D. Hoopman. Law suits filed by Mobil in States of Ohio, Louisiana, Nebraska, S. Carolina and Utah to enjoin and declare invalid state takeover statutes.

Oct. 31—Meetings: Marathon Board of Directors meets with investment bankers, First Boston; with principal outside counsel, Jones, Day, Reavis & Pogue; with retained tender offer counsel, Skadden, Arps, Meagher and Flom. Total situation reviewed with Board by General Counsel, K. B. Hampton. Marathon Board rejects Mobil offer as "grossly inadequate from financial viewpoint". Following antitrust presentation by General Counsel and retained counsel, Board authorizes filing of antitrust suit against Mobil.

Nov. 1—Suit filed by Marathon in Federal District Court, Northern District of Ohio, Cleveland, Ohio; Temporary Restraining Order entered by Chief Judge Frank J. Battisti enjoining Mobil from proceeding with the Tender Offer. Temporary injunction to run through November 10, 1981.

Nov. 2—(a) Marathon files its Schedule 14D-9 with the SEC setting forth its reasons for opposing the Mobil Tender Offer; recommends that Marathon shareholders not tender to Mobil; advises shareholders of the various steps it may take to protect interests of shareholders, e.g. an acquisition, white knight, special dividend, royalty trust, liquidation, etc.

(b) Marathon mails Schedule 14D-9 and a letter to its shareholders.

Nov. 3—(a) Stipulation filed by Marathon/Mobil's action to enjoin enforcement of Ohio takeover statute; in effect placing action in abeyance pending resolution of the Cleveland antitrust case.

(b) Judge Battisti (Cleveland antitrust case) refuses to vacate TRO but enjoins both Marathon and Mobil from making any announcements, press releases, etc. concerning the Mobil Tender Offer, i.e., a mutual "gag order".

(c) $5 billion Credit Agreement of July 14 modified to permit "initiated" tender offers by Marathon and repurchase of $2 billion in Marathon shares.

Nov. 9—U.S. Steel contacts Marathon regarding possible interest in a negotiated transaction; extensive discussions and negotiations ensue.

Nov. 10—(a) The Federal Court in Cleveland (Judge John M. Manos) continues the temporary restraining order against Mobil, removes the gag order, and sets new dates for the Mobil offer: Proration date November 21; withdrawal date December 1; expiration date December 11; hearing on issuance of preliminary injunction set for November 17, 1981.

(b) Marathon give notice to Chase Manhattan Bank and other banks of borrowing of $5 billion under the Credit Agreement of July 14, 1981; "no decision has been made as to the use of proceeds".

Nov. 11—Parades and demonstrations of support for Marathon in Findlay and other locations. Public meetings held by Senator Metzenbaum and Representative Oxley. Hoopman denounces Mobil's actions as a throwback to the days of the Standard Oil Trust; nation-wide press and television coverage. Mobil's attempt to make secret "hold separate" agreement with FTC becomes public.

Nov. 13—(a) Federal Trade Commission makes request of Mobil and Marathon for additional information under Hart-Scott-Rodino Antitrust Improvements Act.

(b) Hoopman sends letter to shareholders indicating the Company is considering a variety of steps to counter the Mobil tender offer and thus to protect shareholders; includes extraordinary dividend, business combinations, repurchase of shares, complete or partial liquidation of company.

(c) The Attorney General of the State of Ohio brings action against Mobil under State Antitrust Statutes (the "Valentine Act"). (This action is in abeyance pending disposition of Federal Court actions.)

Nov. 17—Hearing commences in Cleveland antitrust case.

Nov. 18—U.S. Steel and Marathon Boards of Directors approve Merger Agreement, a Tender Offer, a Stock Option and an Option on the Yates Field. Tender Offer is for 30 million shares at $125 a share with balance of shares to be acquired through merger with $100 senior notes for 12 years at 12½ percent interest. Proration date November 28; withdrawal date December 10; expiration date December 17.

Offer reputed to be worth approximately $6.4 billion, substantially over $1 billion higher than Mobil's offer.

Nov. 19—U.S. Steel Tender Offer commences.

Nov. 24—(a) Mobil files action in U.S. District Court for the Southern District of Ohio, Eastern Division against Marathon, Steel and certain of Marathon's directors seeking to enjoin carrying out of the tender offer and merger by Steel and the exercise of the Stock Option and the Yates Field Option. Judge Kinneary issues Temporary Restraining Order against proceeding with the Steel tender offer and exercise of the options; hearing set for December 3, 1981.

(b) Mobil announces it has received 26 million shares in its first proration box, less than half Marathon's outstanding shares and far short of the 40 million sought by Mobil.

(c) Mobil announces it has acquired shares of U.S. Steel costing approximately $15 million.

Nov. 25—(a) Judge Kinneary (the Columbus action) reschedules the hearing on the Mobil suit for Friday, November 27; flurry of activity results over Thanksgiving and the weekend of November 28 through November 30.

(b) Mobil amends its tender offer; calls for 30 million shares at $126 each with $90 debentures for the balance. Offer is conditioned on invalidation of the Yates Field Option (alternatively, Mobil retains right to purchase less than 50 percent of Marathon shares). Establishes second proration period ending December 4 (only room in the second proration box for about 5–6 million shares); withdrawal date December 4; expiration date December 11.

Nov. 27—Hearing commences in the Columbus case; Messrs. Tower, Geier, Hoopman, Graham and others testify November 27, 28 and December 1. In the Columbus case, Judge Kinneary modifies the temporary restraining order to permit Steel to continue with its tender offer; orders that neither Mobil nor Steel can purchase any shares of Marathon until 5 business days following the Court's ruling on Mobil's request for temporary injunction. ("tends to place both tender offers on an equal footing")

Nov. 30—(a) Allied Corporation discloses its earlier offer to Marathon of $120 for 60 of Marathon shares with balance of shares to be acquired through merger of 2 shares Allied for each Marathon share.

(b) Judge Manos (Cleveland Antitrust case) rules in favor of Marathon and issues broad preliminary injunction against Mobil and any party acting in concert with it from purchasing Marathon shares. Mobil files Notice of Appeal to 6th Circuit.

Dec. 1—(a) Oral arguments end in the Columbus case.

(b) Judge Manos (Cleveland Federal District Court) denies Mobil's request to stay the preliminary injunction and reject Mobil's proposal to "spin-off" Marathon's refining and marketing operations to an undisclosed buyer.

(c) Mobil petitions the 6th Circuit Court of Appeals (Cincinnati) to stay or set aside certain aspects of the preliminary injunction granted by Judge Manos; asks for hearing by December 8.

Dec. 3—(a) New York Times reports that Mobil is considering a joint bid for a tender offer with another company that purportedly would avoid anti-trust problems; speculation is that it is Mesa, Amerada-Hess, etc. Marathon representative comments: "sounds like another attempt to circumvent Judge Manos' preliminary injunction in the Cleveland case."

(b) Judge Edwards, 6th Circuit Court of Appeals, denies Mobil's request for expedited hearing on its appeal; sets week of December 14 for oral argument.

Dec. 4—(a) Judge Kinneary extends temporary restraining order in the Columbus case to December 9—to give him time to study case and render opinion; affects withdrawal dates but does not affect proration dates.

(b) Steel proration date expires midnight; much stock committed to Steel's "proration box". Approximately 54 million shares tendered, representing about 90 percent of Marathon's outstanding shares.

Dec. 7—(a) Mobil announces a "Heads of Agreement" with Amerada Hess, whereby, following Mobil's acquisition of Marathon, Mobil would sell to Amerada Hess Marathon's Marketing, Refining and Transportation assets for a mere 6 percent of Mobil's cost of acquiring Marathon and on extraordinary favorable credit terms.

(b) In the Columbus case, Judge Kinneary denies Mobil's application for a Preliminary Injunction for failing to make a substantial showing of likelihood of success on its claims that Marathon and U.S. Steel had violated the Williams Act or State law.

Dec. 8—(a) Mobil files amendment to its Schedule 14D–1 disclosing arrangement with Amerada Hess.

(b) Mobil files motions in the Cleveland antitrust case requesting modification of Judge Manos's temporary injunction to allow Mobil to purchase Marathon shares on December 15, and for other relief, on grounds that the deal with Amerada Hess solved the antitrust problems.

(c) The Federal Trade Commission votes unanimously to seek a court order blocking Mobil's acquisition of Marathon on grounds that it would violate federal antitrust laws.

(d) Judge Kinneary denies Mobil's Motion for Injunction pending appeal; Mobil files Notice of Appeal to 6th Circuit.

Dec. 9—(a) Judge Manos denies Mobil's motion made on December 8.

(b) Mobil files notification with Federal Trade Commission under Hart-Scott-Rodino Act to pave the way for it to acquire up to 25 percent of the shares of U.S. Steel Corporation.

Dec. 11—(a) The 6th Circuit Court of Appeals sets oral arguments on appeals of both the Cleveland and Columbus cases for Thursday, December 17. The 6th Circuit Court of Appeals has also extended the withdrawal dates of both the U.S. Steel and Mobil offers to five (5) business days after the Appeals Court decision.

(b) The Federal Trade Commission institutes Injunction action against the Mobil takeover attempt.

The CHAIRMAN. Gentlemen, before the chair recognizes my cochairman and distinguished friend from Oregon and other members of the two committees, are there further comments you would like to make at this time prior to questions?

If not, then the chair is pleased to recognize my cochairman, Senator Packwood.

Senator PACKWOOD. Mr. Campbell, right at the end of your testimony you were very tantalizing. I am not quite sure I understood exactly what you are driving at.

Are you suggesting that size in and of itself, or growth of conglomerates in and of themselves as they are bigger and bigger, ought to be a factor in applying the antitrust laws but isn't under the present law?

Mr. CAMPBELL. Senator, not exactly. I am saying it isn't under the present law. I recognize that it is a different judgment as to whether it should be.

The Commission has not taken a position as to whether the antitrust laws ought to be amended so as to attack aggregate concentration.

I am not at liberty to speak for the Commission.

Senator PACKWOOD. How long have you been in your position?

Mr. CAMPBELL. About 2 months.

Senator PACKWOOD. What is your background?

Mr. CAMPBELL. I graduated from Harvard Law School in 1976, where I had the benefit of learning antitrust law from Prof. Donald Turner and advanced antitrust from Prof. Robert Pitofsky.

I clerked for Judge MacKinnon in the U.S. Circuit Court of Appeals, District of Columbia.

I clerked for Justice White in the U.S. Supreme Court, in which capacity I was able to assist the Justice in all the antitrust cases that came before the Court at that time.

I worked in Illinois for a short while in the reelection campaign for Governor Thompson, and practiced law in Chicago, where I focused on antitrust law. I handled both plaintiff and defendant antitrust cases.

Last September, September of 1980, I was appointed a White House Fellow by President Jimmy Carter and I served as a White House Fellow until the end of January 1981, at which point I vol-

untarily resigned my White House Fellowship to accept an appointment as Executive Assistant to the Deputy Attorney General, Ed Schmults. In that capacity I assisted Deputy Attorney General Schmults in analyzing all the problems that came from the Litigating Division, including the Antitrust Division.

I had communication with Professor Baxter in this post, even while he was still professor before he came into his position as Assistant Attorney General.

Then 2 months ago Chairman Miller asked me to come over to the FTC to head the Bureau of Competition.

Senator PACKWOOD. Then you have got a good academic background in antitrust, a fair, although short practice, and pretty good knowledge of it.

Is that a fair statement?

Mr. CAMPBELL. I would not judge the last but I think you are right as to the first two.

Senator PACKWOOD. Not speaking for the Federal Trade Commission but for yourself, do you personally think that size in and of itself ought to be a factor in the antitrust laws?

Mr. CAMPBELL. Speaking only for myself I do not think size in and of itself ought to be a factor. I omitted one part of my background which I should have mentioned. I hold a doctorate in economics from the University of Chicago. I prefer to address that question as an economist.

I think one can see some benefits from size, some detriments from size from an economic perspective. I emphasize that, for present purposes, I place social perspectives to one side. They are very important, but purely as an economist I cannot condemn size.

There are many instances where size has led to efficiencies, improved economies of scale.

Senator PACKWOOD. Then explain to me—Mr. Chairman, keep time on me the way you do everybody else in the committee.

You explain to me what it was you were leading us to in your statements there because I am not quite sure where you are going.

Mr. CAMPBELL. It is an attempt to be as direct and forthright to the committees as possible. In my briefings with the staff of these two committees and also in my briefings to the press, I have had frequently expressed to me concern for aggregate concentration, concern for employment, concern for disruption to the particular community.

I would be misleading and not serving the committees or Congress or the Commission if I were to say, "Don't worry, those factors will be taken into account. Those factors I have firmly in mind. And those factors will be addressed by the antitrust laws." Rather, what I am attempting to do is say they are not in my judgment reached by the antitrust laws.

Senator PACKWOOD. Going for the moment to unemployment, because I doubt we are going to put that factor into antitrust, although your statement was very apt, but we could put percentage of market or size into antitrust laws if we chose to.

You would advise against that?

Mr. CAMPBELL. I would, Senator, for the reason I stated. There are some benefits to size.

Senator PACKWOOD. As an economist, you heard Dr. Adams' testimony, as an economist do you find organizations get more efficient as they become bigger and bigger?

Mr. CAMPBELL. There is an economic concept called the long run average cost curve. As a firm proceeds outward it will eventually hit the minimum on that long run average cost curve. Then it will proceed upward again.

Senator PACKWOOD. The principal reason I voted to create the Department of Education is I thought anything taken away from the Department of Health, Education, and Welfare couldn't be bad. Things could not go downhill for education if they were removed from that gigantic department.

In the intervening years we have had the Department of Education I have questioned the wisdom of my decision. But overall I would probably do the same thing again.

Let me ask you one last question. Senator Cannon and I have introduced a bill that Dr. Adams made reference to and you are familiar with, that would simply prohibit mergers between international major oil companies and the domestic oil companies for a period of 1 year while the Federal Trade Commission had further time to study the effects of the mergers.

I think we are going to see some others coming down the road. What is your opinion of that?

Mr. CAMPBELL. Again, I do not speak for the Commission. My personal opinion of the bill is that the study is an excellent idea. As it happens, the Bureau of Competition has already commenced such a study drawing on the documents that we developed in our 8-year investigation of the oil companies in the matter of Exxon, et al.

As to the moratorium, I would have to answer that represents a judgment that any merger would be bad until we have completed this study, and as an economist, I would not support that judgment. I don't know that the Commission——

Senator PACKWOOD. It doesn't presuppose that. It just presupposes that we may not be able to distinguish the good ones from the bad ones. They come along quickly and there is no harm in delaying for a year while you have a chance to do the study.

Mr. CAMPBELL. I think that is the point, Senator, without stressing too much the harm that may come within a year, there are some acquisitions which would be beneficial, and I would not foreclose that possibility even within the year.

Senator PACKWOOD. Thank you.

The CHAIRMAN. If the Senator would yield, I am curious. A merger is a little bit like making an omelet out of a dozen eggs. Once you put the omelet together, it is kind of hard to reconstitute the eggs, isn't it?

Mr. CAMPBELL. As a matter of structure, that is true. It is difficult once the merger has happened. There are some instances where it is much easier than others; for example, where the companies might have merged only their stock and held separate the actual plant. It would be easier than otherwise. Again, without speaking for the Commission, that might be an alternative to consider instead of an outright merger moratorium.

The CHAIRMAN. But a merger once constituted, particularly if there is transfer of assets, reserves, refining staff and personnel changes, changing of top officers, loss of employees, loss of portions of markets and so forth, it becomes very, very hard to reconstitute to draw those people who had been let go back to pick up closed outlets, to retrieve markets that have been abandoned, it becomes enormously difficult, does it not?

Mr. CAMPBELL. There are many such instances, Mr. Chairman, that is correct. There are some where it is easier than others.

The CHAIRMAN. As a matter of prudence in addressing this sort of question, it is not unwise?

Mr. CAMPBELL. Prudence?

The CHAIRMAN. In terms of seeing to it that we don't get irretrievably committed to an unfortunate merger that later is a matter of public policy or antitrust laws we may find ourselves later compelled to do away with, isn't that right?

Mr. CAMPBELL. I think that is right, and that is why Congress gave to the FTC its power to go in for injunctions, and that is exactly what we are doing in the *Marathon* case, to prevent the merger.

The CHAIRMAN. We applaud that.

Professor Adams, you were nodding affirmatively. Would you like to give us some comments on your thoughts at this time.

Mr. ADAMS. I must say I agree with the thrust of the proposed Brown bill and the Packwood-Cannon bill. I don't think any harm can be done by imposing a 1-year moratorium until a more definitive study of the effects of these megamergers is completed. I have seen no evidence, and I think none has been adduced, which would show that Marathon cannot stand on its own feet and be an efficient major integrated oil company without being acquired either by Mobil or by United States Steel.

The CHAIRMAN. As a matter of fact, its profit and loss statements indicate it is doing splendidly.

Mr. ADAMS. I think so. It is a company that seems not to have experienced any difficulty.

The CHAIRMAN. It might be one of the reasons Mobil would like to have it, that plus the fact its reserves are much, much higher than the book value of its stock.

Mr. ADAMS. Certainly from Mobil's point of view it would be a better acquisition than Mobil's acquisition of Montgomery Ward, which "Forbes," in the attachment that I submitted to the committee, called Mobil's Monkey.

The CHAIRMAN. The Chair observes without objection that two additional inserts that you had requested be included in the record are inserted in the record at the conclusion of your statement. The Chair now is going to recognize my colleagues in the order of their appearance. First is our colleague from Tennessee, Mr. Gore.

Mr. GORE. Thank you very much, Mr. Chairman.

Without objection, I would like to insert some material into the record at this point which has been put together by the staff of the Oversight and Investigations Subcommittee, principally Dr. Milton Lower. It shows the growth in dollar volume spent by the top 20 oil companies for mergers and acquisitions from 1978 through 1981. In 1978, $532 million was spent by these top 20 oil companies for ac-

quisitions and mergers. This year, although the year is not over yet, the same 20 companies have spent $12,172 million on acquisitions and mergers.

The CHAIRMAN. Without objection, the documents referred to will be inserted in the record at the appropriate place.

Mr. GORE. If the staff could provide, if we have some extra copies for the witnesses, I would like to provide it as a courtesy, but that is all right if they are out in the back room there.

[The information follows:]

TOP 20 OILS: MERGERS AND ACQUISITIONS—1978 TO AUGUST 5, 1981

This list of mergers and acquisitions by the top 20 oil companies and their affiliates was compiled from a variety of sources, including the Congressional Research Service, original listings such as the Mergers and Acquisitions journal and the Conference Board, the Federal Trade Commission's annual reports on acquisitions (1978 latest year available), the DOE's Performance Profiles of Major Energy Producers, 1979, and descriptive material in the business press.

There is no one complete or definitive source, and occasional inconsistencies have here been resolved by judgments as to which is the latest or most complete source of information on a particular merger or acquisition. For example, the DOE's Performance Profiles is taken to be the most nearly definitive source for 1979, because these acquisition data were developed a year after the fact within a systematic analysis of sources and uses of funds. Foreign acquisition data are reasonably complete only for 1978, since the FTC's annual report is the best source of such data and is not available for subsequent years. All sources probably miss some of the smaller acquisitions, and this listing, in common with others, is therefore less than fully comprehensive.

TOP 20 OILS: MERGERS AND ACQUISITIONS, 1978 TO AUGUST 5, 1981—SUMMARY TABLE

Acquiring company or affiliate	Total listed acquisitions, 1978–81	Energy	Non-energy	Acquisitions for which cost data available (consideration paid in millions of dollars)													
				1978		1979		1980		1981		Total, 1978–81		Energy		Non-energy	
				Number	Paid	Number	Paid	Number	Paid	Number	Paid	Number	Paid	Number	Paid	Number	Paid
Exxon	6	3	3	0	.....	2	1,174.4	1	300.0	0	.....	3	1,474.4	1	300.0	2	1,174.4
Mobil	5	2	3	0	.....	2	842.0	1	715.0	0	.....	3	1,557.0	2	1,507.0	1	50.0
Texaco	1	1	0	0	.....	0	.....	0	.....	0	.....	0	.....	0	.....	0	.....
Standard (California) [1]	9	3	6	1	13.0	1	45.0	5	746.0	1	130.0	8	934.0	3	72.3	5	861.7
Gulf	4	3	1	0	.....	1	121.0	0	.....	1	325.0	2	446.0	2	446.0	0	.....
Standard (Indiana)	5	2	3	0	.....	2	462.86	0	.....	0	.....	2	462.86	1	.86	1	462.0
Atlantic-Richfield	9	4	5	0	.....	1	5.5	2	323.0	0	.....	3	328.5	0	.....	3	328.5
Shell	1	1	0	0	.....	1	3,660.0	0	.....	0	.....	1	3,660.0	1	3,660.0	0	.....
DuPont-Conoco [2]	5	4	1	0	.....	0	.....	1	25.0	2	7,700.0	3	7,725.0	2	7,700.0	1	25.0
Phillips	2	1	1	0	.....	0	.....	2	24.4	0	.....	2	24.4	1	8.8	1	15.6
Tenneco	11	4	7	1	170.6	2	138.7	1	757.0	1	400.0	5	1,466.3	3	538.7	2	927.6
Sun	17	3	14	2	296.6	6	388.8	2	2,321.0	0	.....	10	3,006.4	3	2,621.0	7	385.4
Occidental	4	1	3	1	23.0	0	.....	1	200.0	1	795.0	3	1,018.0	0	.....	4	1,018.0
Standard (Ohio)	5	4	1	0	.....	2	105.0	0	.....	2	2,500.0	4	2,605.0	3	805.0	1	1,800.0
Getty Oil	6	4	2	0	.....	1	281.0	3	1,224.0	1	70.0	5	1,575.0	4	1,039.0	1	536.0
Union Oil	1	1	0	1	21.0	0	.....	0	.....	0	.....	1	21.0	1	21.0	0	.....
Marathon	0	0	0	0	.....	0	.....	0	.....	0	.....	0	.....	0	.....	0	.....
Ashland	5	0	5	2	8.34	0	.....	0	.....	1	252.0	3	260.34	0	.....	1	260.34
Amerada-Hess	0	0	0	0	.....	0	.....	0	.....	0	.....	0	.....	0	.....	0	.....
Cities Service	1	1	0	0	.....	0	.....	1	77.0	0	.....	1	77.0	1	77.0	0	.....
Top 20 oils and affiliates	97	42	55	8	532.54	21	7,224.26	20	6,712.4	10	12,172.0	59	26,641.2	28	18,796.66	31	7,844.54

[1] Most of the acquisitions listed for Socal were by Amax, Inc., in which Socal has a 20 percent interest.
[2] Only the DuPont acquisition of Conoco in 1981 is counted.

TOP 20 OILS: MERGERS AND ACQUISITIONS

Acquiring company and date of acquisition or merger	Acquired company	Description or notes	Consideration paid
		1978	
Exxon:			
January 1978	Campanïia Minera Disputada Chile.	Chilean copper mining company	NA.
1978 [1]	Colmar Surinam Oil	Surinam exploration company	NA.
1978 [1]	General Sekiyu kk	Japanese refiner	NA.
Mobil: April 1978	Rexene Styren	Division of Dart Industries	Less than $10,000,000 assets.
Texaco			
Standard (California): Nov. 8, 1978.	Cetus Corp	Acquired 25 percent interest, Biotech Company.	$13,000,000 (cash).
Gulf: December 1978	Commercial Alcohols	Canadian chemical company	NA.
Standard (Indiana)			(2)
Atlantic-Richfield:			
1978	R. W. Miller Holdings Ltd.	Australian coal properties	NA.
1978 [1]	S & M Fox Property	do	NA.
Shell			(2)
Conoco			(2)
DuPont: 1978 [1]	Discovery Minerals, Ltd	Canadian exploration company	NA.
Phillips			(2)
Tenneco:			
January 1978	Dixon Lumber Co		Less than $10,000,000 assets.
Do	Lydex Automot Exhaust	Danish auto parts company	NA.
February 1978	Pryor Foundry		Less than $10,000,000 in assets.
March 1978	Philadelphia Life Insurance	Acquired remaining 76 percent	$170,600,000 (stock).
September 1978	Albright & Wilson, Ltd	Acquired remaining stock; English chemical company.	NA.
Sun Co.:			
Jan. 19, 1978	Becton Dickinson & Co	Acquired 34 percent interest medical equipment company.	$293,000,000 cash.
Mar. 6, 1978	Atlas Screw & Specialty	Distributor of industrial fasteners.	$3,600,000.
April 10, 1978	Weiland Computer Group, Inc		Less than $10,000,000 assets.
Becton Dickinson: June 1978.	Energetics Science, Inc.		Do.
Occidental: Aug. 29, 1978	Ring Around Products		$23,000,000 (stock).
Standard (Ohio): January 1978.	B P Alaska, Inc	Acquired from parent, British Petroleum.	NA.
Getty Oil			(2)
Union Oil (California): December 7, 1978.	Silver Bell Industries	Includes uranium operations	$21,000,000.
Marathon			(2)
Ashland Oil: Jan. 30, 1978	Ted Wilkerson, Inc	Bridge and foundry Construction and repair and leasing of equipment.	$5,740,000.
	Maxwell Bridge Co	do	$2,600,000.
Amerada-Hess			(2)
Cities Service			(2)
Top 20 oils and affiliates (DuPont listed for information only until 1981): 1978.	22 companies acquired or merged, partially or fully (excluding DuPont acquisition).	6 energy companies, 16 nonenergy companies.	$532,540,000 (cash and stock) (8 acquisitions by 6 oils and affiliates, for which cost data available).
		1979	
Exxon:			
June 1, 1979	Polyethylene products division	From National Distillers European operations.	$4,400,000 (cash).

TOP 20 OILS: MERGERS AND ACQUISITIONS—Continued

Acquiring company and date of acquisition or merger	Acquired company	Description or notes	Consideration paid
Sept. 24, 1979	Reliance Electric	Acquired 93 percent interest (largest cash acquisition in history to that date).	$1,170,000,000 (cash).
Mobil:			
Feb. 20, 1979	W. F. Hall Printing Co	Mass-market paperbacks; Fortune 2d 500 Co. (No. 825).	$27.50 per share—$50,000,000 estimate (assets 1978—$152,000,000).
July 17, 1979	General Crude Oil	Acquired from International Paper.	$792,000,000.
Montgomery Ward (acquired by Mobil in 1976): April 1979.	Almart-J. B. Hunter	Acquired from Allied Stores	NA.
Texaco			(a)
Standard (California): May 1979.	Bahaman Refinery	Acquired additional 15 percent interest (to 50 percent) in Carey Energy's refinery during Charter Co. takeover.	$45,000,000 (cancelled debt).
AMAX (Socal acquired 20 percent in 1975, sought remaining 80 percent for $2,000,000,000 in 1979, $3,800,000,000 in 1981): August 7, 1979.	Wilbur B. Driver, Inc	Acquired from General Telephone and Electric.	NA.
Gulf: Oct. 19, 1979	Amalgamated Bonanza Petroleum, Ltd.	Canadian exploration company	$121,000,000 (cash plus stock).
Standard (Indiana):			
July 3, 1979	Solarex Corp	Acquired 21 percent interest; largest maker of solar cells.	$860,000 (cash).
Sept. 20, 1979	Cyprus Mines	Major 2d 500 copper company (No. 577).	$462,000,000 (cash plus stock).
Nov. 8, 1979	Thiokol Fibres, Ltd	Canada	NA.
Atlantic-Richfield:			
July 13, 1979	Northrup, Inc	Completed acquisition of A/C & Heat Contractor.	$5,500,000 (stock).
Oct. 11, 1979	Airtron, Inc	A/C & Heat Contractor	NA.
Shell: December 11, 1979	Belridge Oil	"Largest acquisition ever" to that date; Kern-Field heavy oil reserves.	$3,660,000,000 (cash).
Conoco			(a)
DuPont			(a)
Phillips			(a)
Tenneco:			
January 1979	Monsanto Flavor & Essence	Acquired from Monsanto Chemical.	NA.
July 22, 1979	Oil and gas properties	1,000,000 acres plus from UV Industries.	$135,000,000.
Dec. 20, 1979	Eastern Tennessee Natural Gas Co.	Acquired remaining 10 percent; pipeline.	$3,700,000.
Sun Co.:			
July 2, 1979	Milne Truck Lines	Trucking, 6 Western States	NA (cash plus stock).
Aug. 9, 1979	Carboline Co	Protective coatings	$49,200,000.
Oct. 31, 1979	Elk River Res. Co.	Coal mining operations and reserves.	$300,000,000 (stock).
Nov. 30, 1979	Catallactics Corp	Data processing	NA.
1979	Computing Division	From Metridata Computing Co	$3,000,000.
1979	Fast Fare, Inc	Convenience Stores	NA.
1979	York Transportation	Trucking	$500,000.
Becton Dickinson (34 percent acquired by Sun, 1978):.			
Feb. 21, 1979	Telemed Corp		$31,600,000 (stock).
Aug. 1, 1979	Medical Dev. Corp		$4,500,000 (cash) .

TOP 20 OILS: MERGERS AND ACQUISITIONS—Continued

Acquiring company and date of acquisition or merger	Acquired company	Description or notes	Consideration paid
Occidental			(2)
Standard (Ohio): July 1, 1979.	Webb Resources and Newco Exploration.	1,500,000 acres oil and gas holdings in Rockies.	$105,000,000.
Getty Oil:			
Feb. 23, 1979	Entertainment and Sports Program Network.	Acquired 85 percent	NA.
1979	Producing oil and gas properties	From Ashland Oil; most of 217,000,000 barrels crude equivalent reserves sold.	$281,000,000.
Union Oil			(2)
Marathon			(2)
Ashland Oil			(2)
Amerada-Hess			(2)
Cities Service			(2)
Top 20 oils and affiliates (DuPont listed for information only until 1981): 1979.	30 companies acquired or merged partially or fully.	11 energy companies, 19 nonenergy companies.	$7,224,260,000 (cash plus stock) (21 acquisitions by 11 oils and affiliates for which cost data available).
		1980	
Exxon: Aug. 5, 1980	Colony Oil Shale Project	Acquired Atlantic-Richfield's 60 percent interest.	$300,000,000 plus contingent $100,000,000.
Mobil: Sept. 29, 1980	Vickers Energy	Acquired from Esmark, including Transocean Oil.	$715,000,000 (cash).
Texaco:			(2)
Standard (California)			(2)
Amax (Socal acquired 20 percent in 1975, sought remaining 86 percent for $2,000,000,000 in 1979, $3,800,000,000 in 1981):			
Feb. 13, 1980	Adobe Oil & Gas	Increased interest from 23 percent to 30.3 percent (Fortune 2d 500 Oil (No. 893)).	$16,800,000.
Mar. 30, 1980	Rosario Resources	Mines silver, gold, lead and zinc	$458,700,000 (cash plus stock).
July 1980	Phosphate mines	Acquired mines in Florida from Borden.	$200,000,000.
November 1980	Magnesium facility	Acquired facility in Utah from NL Industries.	$60,000,000.
Dec. 30, 1980	Avance Oil & Gas	Texas, Oklahoma, New Mexico (producing wells).	$10,500,000.
Gulf: March 1980	Hartzog Draw O&G properties	Acquired Wyoming property from Woods Petroleum.	NA.
Standard (Indiana):			
Mar. 6, 1980	Empire Energy	Acquired Colorado coal mine from Houston Natural Gas.	NA.
Sept. 3, 1980	Western Foampak	Merged with Amoco Chemical Co.	NA.
Atlantic-Richfield:			
January 1980	Oil and gas operations	Acquired Utah operations of General Exploration Co.	NA.
Apr. 3, 1980	Brandywine Oil	Gasoline and fuel oil distributor	NA.
June 17, 1980	Oxirane Co's	Acquired remaining 50 percent from Halcon International.	$270,000,000 (cash) plus assume debt.
Anaconda Co. (acquired by Atlantic-Richfield 1977): Aug. 13, 1980.	Wisconsin Centrifugal	Merged into Anaconda's brass subsidiary.	$53,000,000 (stock).
Shell			(2)

TOP 20 OILS: MERGERS AND ACQUISITIONS—Continued

Acquiring company and date of acquisition or merger	Acquired company	Description or notes	Consideration paid
Conoco: Sept. 11, 1980	Globe Petroleum, Ltd	British gasoline retailer	NA.
Consolidation Coal (acquired by Conoco 1966): Sept. 26, 1980.	Canton Marine Terminal	Acquired Baltimore marine terminal.	$25,000,000.
DuPont: Jan. 3, 1980	Remington Arms	Acquired remaining 30 percent	$46,000,000 (stock).
Phillips:			
Jan. 16, 1980	Interplastic Corp	Chemical specialties	$15,600,000.
May 1980	Acurex Corp	Solar energy systems, engineering, instruments.	$8,800,000.
Tenneco: May 1, 1980	Southwestern Life Corp	Virginia life insurance mutual fund management company.	$757,000,000 (stock).
Sun Co.:			
Jan. 7, 1980	Mr. Zip, Inc	Convenience stores in Carolinas	NA (cash).
Mar. 11, 1980	Viking Oil, Ltd	North Sea operations	$21,000,000.
Sept. 15, 1980	Texas Pacific Oil	Acquired U.S. oil and gas operations of Seagram, Ltd. "Second largest business transaction in U.S. history to that date".	$2,300,000,000 (cash).
Dec. 1, 1980	Zippy Mart, Inc	Acquired 327 convenience stores.	NA (stock).
Occidental Hooker Chemical (acquired by Occidental, 1968): Dec. 2, 1980.	Firestone Plastics	Acquired Polyvinal chloride division of Firestone.	$200,000,000 (cash).
Standard Oil (Ohio)			(2)
Union Oil			(2)
Marathon			(2)
Ashland Oil			(2)
Amerada-Hess			(2)
Getty Oil:			
Jan. 23, 1980	Reserve Oil & Gas	2,000,000 acres of undeveloped oil lands.	$628,000,000 (cash).
July 15, 1980	ERC Corp	Acquired 95 percent of common, insurance holding company.	$536,000,000 (cash).
July 23, 1980	Plateau Mining	Acquired coal mining company from UNC Resources.	$60,000,000 (cash).
Cities-Service: Nov. 10, 1980.	Wyoming coal properties	Acquired 340,000,000 tons of coal reserves from Peabody Coal.	$77,000,000.
Top 20 oils and affiliates (DuPont listed for information only until 1981): 1980.	28 companies acquired or merged, partially or fully (excluding DuPont acquisition).	15 energy companies; 13 nonenergy companies.	$6,712,400,000 (cash plus stock) (20 acquisitions by 11 oils and affiliates for which cost data available. Excludes DuPont acquisition in 1980).
1981 (through Aug. 5)			
Exxon			(2)
Mobil	Unsuccessful bids for Conoco and Marathon.		(2)
Texaco: Jan. 19, 1981	Neches Butane Products	Acquired remaining 50 percent from B.F. Goodrich.	NA.
Standard (California): Jan. 9, 1981.	Utah phosphate reserves	From Stauffer Chemical	$130,000,000.
Gulf: Mar. 16, 1981 [1]	Kemmerer Coal Co	Production in 1980: approximately 4,600,000 tons.	$325,000,000.
Standard (Indiana)			(2)
Atlantic-Richfield: Feb. 2, 1981.	Sartomer Division	Acquired from Leski, Inc	NA.
Shell			(2)

TOP 20 OILS: MERGERS AND ACQUISITIONS—Continued

Acquiring company and date of acquisition or merger	Acquired company	Description or notes	Consideration paid
Conoco:			
1981	Coal leases	Acquired from United States Steel.	$100,000,000.
Mar. 27, 1981	Texas oil and gas properties	Acquired from Rohm & Haas	NA.
DuPont: Aug. 4, 1981	Conoco	DuPont won bidding war against Mobil and Seagram Combines No. 14 and No. 15 in 1980 Fortune 500.	$7,600,000,000 (cash plus stock).
Phillips			(2)
Tenneco:			
Mar. 12, 1981	California oil and gas properties	Acquired from Hunnicutt & Camp.	NA.
Apr. 24, 1981	Houston Oil & Minerals	Tenneco acquired this 2d 500 Oil (No. 541) in a complex deal—huge reserves.	$400,000,000 estimated by CRS "nearly $2,000,000,000" by Fortune.
Sun Co			(2)
Occidental:			
Feb. 27, 1981	Crestmont Oil & Gas	Occidental's OPI Holding Co. Acquired 62 percent.	NA. Assets $13,600,000 in 1980;
June 1, 1981 [1]	Iowa Beef Processors	Firm was No. 81 in Fortune 500 for 1980.	$795,000,000 (stock).
Standard (Ohio):			
Apr. 9, 1981 [1]	Operating mines and coal reserves.	Acquired from United States Steel; reserves 700–800 plus million tons.	$700,000,000.
June 4, 1981	Kennecott Corp	Firm was No. 169 in Fortune 500 for 1980.	$1,800,000,000.
Getty Oil:			
June 11, 1981	Energy Fuels Corp	Getty Mining subsidiary acquired from Centurion Investment Co.	$70,000,000.
Union Oil			(2)
Marathon			(2)
Ashland Oil:			
Jan. 23, 1981	U.S. Filter Corp	Acquired 60 percent control of No. 334 in Fortune 500 for 1980.	NA (cash). Assets $820,000,000 in 1979.
Feb. 6, 1981	Investment Corp. of Florida	Acquired by Rebus, Inc. Affiliate	NA.
Feb. 27, 1981	Integon Corp	Life insurance company	$252,000,000 (cash plus stock).
Amerada-Hess			(2)
Cities Service			(2)
Top 20 oils and affiliates: 1981 (through Aug. 5).	17 companies acquired or merged, partially or fully.	10 energy companies; 7 nonenergy companies.	$12,172,000,000 (cash plus stock) (10 acquisitions by 8 oils and affiliates for which cost data available).

[1] Acquisition was pending at last information.
[2] No reported acquisitions.

Mr. GORE. There are two reasons for the extraordinary story unfolding this month with Mobil and Marathon and United States Steel. One is the hemmorhage of cash flow in the oil industry. The second in my opinion is the green-light signal offered by you, Mr. Baxter, and by you, Mr. Campbell, at the FTC, signaling that a new era is at hand in antitrust enforcement. This is unusual because in the past antitrust laws have been supported on a bipartisan basis by Democrats and Republicans. Indeed, the principles

were mostly established during the progressive era with President Theodore Roosevelt.

You say in your statement, Mr. Baxter, that you don't believe that your new enforcement policies account for much of the increase. However, about 90 percent of antitrust enforcement comes in the form of speeches and testimony and signals to the industry as to what they had better not try. I quote from Business Week magazine a couple of months back. They say:

> The knowledge that Baxter is planning to rework the guidelines is already having an impact on the antitrust advice business gets. Lawyers are telling companies with potential deals that fall on the wrong side of the current guidelines that they have less to worry about, because justice no longer supports these measures.

You are from the so-called Chicago school, if I understand the debate in these circles correctly, and you have held the view that antitrust laws have been enforced too rigorously in the past, and maybe we have been too tough on big mergers and been too concerned.

Mr. Adams quoted your testimony before the Senate Judiciary Committee to that effect. Do you think that you have given a green light to these mergers, and that that has played a role in the extraordinary wave of merger activity that we see now?

Mr. BAXTER. I will make a couple of comments in response to that, Mr. Gore. First of all, I don't know what it means to say that I was from the Chicago school. I have never gone to school at Chicago.

Mr. GORE. The Chicago school of thought. I believe you know what I am talking about, don't you?

Mr. BAXTER. Fifteen years ago I would have known what you were talking about. Fifteen years ago there was a very sharp divergence in industrial organization theory between two groups of economists in the United States, and one of those groups was made up in significant part of people who had received their training at Chicago. The gap between those two points of view has narrowed very, very sharply more recently. It is barely perceptible at the present point in time.

I recently appointed a new chief economist for the Antitrust Division, Mr. Lawrence White. He got his Ph. D. at Harvard University under Prof. Richard Caves. If one were to pick out someone who was the antithesis of the Chicago school 15 years ago but nevertheless a scientist as an economist, and a very fine economist, Richard Caves might have been that individual. Nevetheless, Mr. Lawrence White would have to be called of the Harvard school as opposed to the Chicago school—in some sense that was the divergence 15 years ago—and I have substantially no disagreement with him on these matters at all. I think the viewpoint that is implied by statements like that is nonexistent at the present time and seriously misleading.

It is perfectly true that I have said that the guidelines will be revised. It is perfectly true, and I will say again today, I think the 1968 guidelines are very inadequate to their task, that they invoke a number of specious theories of market failure for which there is no empiric evidence whatsoever. It is also undoubtedly true that there does exist the possibility of mergers which would have violated the 1968 guidelines that will not violate the guidelines soon to

be published, but it is not a matter of vigor, it is not a matter of believing or not believing in the antitrust laws.

There is no one who believes in the antitrust laws more deeply than I do. The question is, rather, what kinds of restrictions on what kinds of activities should the antitrust laws impose if they are to further productivity, maximimize output of goods and services at the lowest possible costs, and the well being of our population, and that is a question about which there can be differences of opinion. But it is no longer accurate in any respect to characterize that as a divergence between the Chicago school and some other never quite identified school.

The CHAIRMAN. Would the gentleman yield?

Mr. GORE. The mainstream of antitrust laws is what I would contract it with.

Mr. BAXTER. That is the mainstream of antitrust.

Mr. GORE. Yes, I yield.

The CHAIRMAN. The Chair observes that the time of the gentleman has expired. The Chair is concerned. The antitrust laws deal with monopoly, tendencies toward monopoly, restraint of trade, or anticompetitive effects of different actions; isn't that right?

Mr. BAXTER. That is correct.

The CHAIRMAN. Also conspiracies, although I don't think we should allege conspiracy here. Now, the questions that you have set out would be evidentiary in establishing the other matters which are most specifically cited in the antitrust laws.

Mr. BAXTER. I am afraid I don't understand that comment, Mr. Chairman.

The CHAIRMAN. You have been talking about the various goals, the lowest price, the overall economic good to the economy and that sort of thing, and obviously we regard that as being the basic thrust of the antitrust laws in achieving competition and eliminating restraint of trades, monopolies, and that sort of thing, and I, to make sure that I understand you correctly as adhering to at least the basic statutory language, and then using these other decisions or these other mechanisms or evidences that you have been alluding to as mechanisms toward achieving that end. Am I correct in that?

Mr. BAXTER. I really don't think you are correct, Mr. Chairman. I would say that those very broad goals that I was mentioning are the ultimate purposes for which we wish to maintain competition.

The CHAIRMAN. I concur in that. My problem was I didn't want the record here to indicate that they were the tests that would be applied in judging a merger.

Mr. BAXTER. They are in a sense——

The CHAIRMAN. Evidentiary in connection with the establishment of the more basic points that would be dealt with under the antitrust laws.

Mr. BAXTER. I would be reluctant to call them evidentiary, Mr. Chairman, because it would be virtually impossible, in the great preponderance of cases, to introduce direct evidence of the effect that any particular transaction would have on those ultimate goals. There is a scientific discipline called economics which has been studying the relationships between various kinds of behavior, various aspects of structure, and those ultimate goals for a very

long time, and doing empirically based research, usually not on particular transactions but on large sets of transactions, to see what their effects are, and from that discipline we draw some generalizations.

Generalizations turn out not to be accurate in their every single application, but as a matter of law, we deal as we must—because they are the best we have—with generalized rules based on what we know about industrial organization.

The statutory language that is involved—and indeed one can regard it as the only statutory language, because it really subsumes the other—is the language that is found in section 7, which says that a merger, or indeed for merger you could substitute any other transaction, a merger shall be regarded unlawful where the effect may be, and that implies some sort of a probablistic judgment, if it is more likely than not, substantially to lessen competition.

Competition is a very broad phrase; it has no inescapable meaning. The question is the content we pour into the term competition, and that content of necessity comes primarily from our learning about industrial organization.

Mr. GORE. Mr. Chairman.

The CHAIRMAN. We are not——

Mr. GORE. Could I ask one more question?

The CHAIRMAN. Yes.

Mr. GORE. Thank you very much.

Mr. Campbell, to you, the FTC, of course, has taken the lead in this particular matter. It is my belief that Justice and the new regime at FTC have given the green light to activities that would have been curtailed in previous administrations, both Republican and Democratic, but the FTC in this case has gone even farther. In addition to giving a green light, you have given a blueprint to Mobil that it can follow to effect the acquisition.

Now, the dissents by Mr. Bailey and Mr. Pertschuk spell this out pretty clearly, and our staff's analysis indicates that the direction or blueprint you provided to the company on how it could avoid problems with the FTC represents a sharp and perhaps unprecedented departure from past practice. Could you comment on that?

Mr. CAMPBELL. I will be happy to, Mr. Gore. First of all let me comment on your charaterization of a green-light signal. In the 2 months I have been at the Commission and head of the Bureau of Competition we have seen two large merger attempts, LTV's attempt to acquire Grumman and Mobil's attempt to acquire Marathon. In each case the Commission ratified the decision to issue a preliminary injunction. I have given no speeches since coming into my position and therefore none that give a green light.

As to the substance of the Mobil-Marathon case——

Mr. GORE. Chairman Miller is capable of doing that all by himself.

Mr. CAMPBELL. Chairman Miller is capable of much without my help, but, again, I don't believe he has addressed antitrust so as to give a green light. I would still disagree with that characterization.

The CHAIRMAN. Will the gentleman yield?

Mr. GORE. Sure.

The CHAIRMAN. I find it most curious that Chairman Miller could indicate to the staff and the public that in a takeover of Marathon by Mobil that probably an injunction would not be filed for a takeover only of Marathon's reserves as apart from the distributing system. I would like to hear from you some explanation, of such be possible, of that kind of rationale.

Mr. CAMPBELL. Surely, Mr. Chairman, I can respond to both questions.

The CHAIRMAN. I think they are related to the same. It is the blueprint argument.

Mr. CAMPBELL. What the Commission voted out and what our complaint will allege is an antitrust violation, and what we will ask the court for is an injunction. There is no question about that. It is not an injunction of only part. It is a request for a full injunction.

The CHAIRMAN. I applaud your undertakings, but as to one the applause will diminish.

Mr. CAMPBELL. The Commission's motion and our preliminary injunction will specify, and I am quoting now from the language of the Commission's motion, that this merger be enjoined:

> Unless and until such time as there is presented a transaction subject to the approval of the court, which would result in an immediate divestiture of the transportation, storage and marketing assets of Marathon, in such a manner as to maintain the divested entity in viable competition in the relevant markets and which divestiture would not violate any of the antitrust laws of the United States.

I would draw your attention to the express reference to "maintaining the divested entity in viable competition." I can assure the chairman and Mr. Gore as well that in what we are filing in the Federal district court, we emphasize that the viability determination depends critically upon access to crude oil. All that we are saying is that if a presentation is made of a divestiture of those aspects which cause our antitrust concern, and the divested entity would be viable, referring to access to crude, refining, and pipeline in that definition, then our antitrust concerns would be less, would drop, and we would not be seeking the preliminary injunction.

There are three reasons why we chose this course. The first is because this most clearly and most honestly represents the area of antitrust concern we had. It is in the marketing where we had the significant overlap. This is not to say, let me repeat again, that access to crude is irrelevant. It is not irrelevant. It is highly relevant. Our pleadings will say that. Viability depends upon that, but the overlaps, the antitrust overlaps of 30 percent or more, were only in the downstream, the marketing.

Second, it is important that we signal correctly, particularly in this matter where the stock market has been so active, precisely what our position is, and had we gone in with an injunction without that clause, I think we would have been guilty of missignaling.

The CHAIRMAN. Why would that statement be true?

Mr. CAMPBELL. Pardon me, sir?

The CHAIRMAN. Why would that statement be true?

Mr. CAMPBELL. Because it would indicate that we had problems across the entire sweep of the two companies' operations. What we have, instead, are antitrust problems with the downstream, and the

upstream is relevant to whether the downstream could exist on its own or not.

Mr. GORE. Do you know of any precedent for an order so crafted?

Mr. CAMPBELL. I know of many cases where we have gone for an injunction which has conditions, stipulations, that action be enjoined until and unless a particular event happens. One can imagine, for example——

The CHAIRMAN. That is a little different than the question raised by Mr. Gore. I would like you to submit to us any orders where you have given a similar signal to the market.

Mr. CAMPBELL. I don't know, to give you a complete answer to your question, as I was about to, as I was going to complete my answer, I don't know of any cases where the Commission has, in the case of an oil acquisition, done this.

Mr. GORE. You don't know of any precedents directly on point?

Mr. CAMPBELL. Not directly, but what I was saying was that—

[The following information was subsequently received for the record:]

FEDERAL TRADE COMMISSION,
BUREAU OF COMPETITION,
Washington, D.C., January 5, 1982.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: By your letter of December 28, 1981, you have asked that I provide further information regarding the procedures followed by the Commission in its recent federal court challenge to Mobil Corporation's attempt to acquire Marathon Oil Company. I testified about this transaction at a joint hearing of the House Energy and Commerce Committee and the Senate Commerce Committee on December 14, 1981.

During the course of the hearing, questions were put to me about whether the court papers filed by the Commission provided Mobil Corporation with an indication of how it might avoid antitrust challenge by the Commission. Your letter of December 28 requests that I furnish specific instances of similar requests for relief that the Commission has made in the past.

It is frequently the case that the specificity of pleadings signals the precise nature of our antitrust concerns. That has been and remains a desired end whether the transaction is a friendly or hostile acquisition. As I indicated during my testimony, I know of no instances in which the Commission was confronted with the exact fact situation raised in this case—that is a hostile takeover attempt of a petroleum company by another petroleum company. However, I can think of several close examples: Louisiana-Pacific Corporation, Docket No. C-2956 and British Petroleum, Ltd., Docket No. 3074. In Louisiana-Pacific, the company was told that the Commission would seek a federal court injunction unless it agreed to partial divestiture of certain processing and marketing assets, and that there was no antitrust concern with the company's acquisition of timberland, the raw material from which the processed products of the company were made. The companies agreed to the divestiture and a settlement was signed, thus eliminating the need to go to federal court. Similarly, with respect to British Petroleum's acquisition of Kennecott Corporation, we informed the companies that partial divestiture would cure antitrust concerns and thus avoid the Commission's need to seek a preliminary injunction. In the past several years, there have been at least fourteen other mergers in which partial divestiture to cure competitive overlaps has been proposed and accepted by the merging companies as a means of avoiding litigation with the Commission. (See attached list of matters.)

This course of action—identification and resolution of competitive problems prior to litigation—is not always possible in light of time constraints and an inability to negotiate a mutually acceptable course of action. In circumstances where early resolution is not possible, and this may often be the case in hostile takeovers where the time periods provided by the Hart-Scott-Rodino Act are shorter, pleadings in the litigation would most likely signal the specific areas of overlap and a means of post-complaint resolution. One such recent instance is the Commission's administrative

complain in *Flowers Industries, Inc.,* Docket No. 9148, where the prayer for relief seeks only partial divestiture to cure competitive overlaps caused by the acquisition. In circumstances where all the lines of commerce acquired in a transaction raise antitrust concerns, partial divestiture, and thus a specific signal as to how the company might cure its antitrust problem, would not be possible. Short of that event, it is consistent with past practices of the Commission and entirely appropriate that pleadings and prayers for relief in merger matters specifically describe the Commission's antitrust concerns. That course most honestly vindicates our responsibility to serve the public interest in our merger decisions. In so doing, the pleadings will also indicate a course of action that the companies might take in order to avoid or cure an antitrust challenge.

I hope that the above has satisfactorily answered your concerns.

Sincerely,

THOMAS J. CAMPBELL, *Director.*

Enclosure.

Instances in which consent order provided for partial divestiture of acquired assets—not full divestiture: (1) Bayer AG, Docket No. C-3007; (2) Cooper Industries, Inc., Docket No. C-2970; (3) Liquid Air Corp., Docket No. C-2990; (4) Louisiana-Pacific Corp., Docket No. C-2956; (5) Schering-Plough Corp., Docket No. C-2986; (6) The Bendix Corporation, Docket No. C-3042; (7) Pay Less Drug Stores, Docket No. C-3039; (8) American Hospital Supply Corp., Docket No. C-3067; (9) Godfrey Company, Docket No. C-3066; (10) Kennecott Corp., Docket No. C-3075; (11) Murata Manufacturing Co.—order allows for partial divestiture, Docket No. C-3053; (12) SmithKline Corporation, Docket No. C-3043; (13) Schlumberger Limited, Docket No. C-3025; (14) W. R. Grace & Co., Docket No. C-3002; and (15) Crane Co., Docket No. C-2959.

The CHAIRMAN. We will assume that that statement then stands that you are unaware of any circumstances of that sort. I must confess myself to be totally unaware of any warning of that sort, but would you inquire into the files of the Commission and see whether any such action has been taken at any earlier time by the Commission. The Chair advises I am aware of none but I look with interest to see whether or not maybe it has been done.

I find it very curious that you have done so, I wish to have it known, and I am unaware of anything in the basic statute of the Federal Trade Commission that either implies the power that that be done or the duty that that be done. It struck me as being the sheerest kind of insertion of extraneous matter into an order of the agency for reasons that I am incapable of explaining.

Mr. GORE. And, Mr. Chairman, if I may add, I think it may well be the key to allowing Mobil to complete this plan when it goes through. The public ought to be aware that the blueprint for how it could be done was written over at the Federal Trade Commission by the new staff there.

Mr. BAXTER. Mr. Chairman, could I intercede on this point?

The CHAIRMAN. I think it would be appropriate, and I notice Professor Adams had a comment he wanted to make.

Mr. CAMPBELL. If I could ask, though, I have three reasons and I have only given two. I will surely yield——

The CHAIRMAN. I think since you are somewhat on the hot spot, Mr. Campbell, you should complete your comments and we will then hear from your associates on the panel.

Mr. CAMPBELL. Thank you, Mr. Chairman. The two reasons I had given heretofore was this most accurately represents our antitrust concerns. Second, it most accurately gives a signal to the market in the matter where the market is quite active, and the third reason is that it preserves as free as possible our ability to represent the Commission's interests before a Federal court.

If we had gone in for an injunction without any reference to what our real concern was, simply an injunction across the board and Mobil had answered, we would then be in a position where issue had been joined and dismissal or modification could only be with the approval of the Federal district court. In this matter, we have preserved a little more freedom for the Commission to indicate to the court and affect the outcome of the litigation.

The CHAIRMAN. That is a most curious interpretation of law. Your ruling would be against, rather the injunction that you would seek would be against the particular takeover plan which Mobil has set forth, would it not?

Mr. CAMPBELL. That is correct.

The CHAIRMAN. Then why is it necessary for you to amplify on that particular takeover plan against some other takeover plan that Mobil might then come forward with?

Mr. CAMPBELL. Because that expresses our concerns. We are not concerned about all areas of overlap.

The CHAIRMAN. You are not down there to express your concern about what might become or what might happen. The Federal Trade Commission is constituted to deal with specific cases, is that not so?

Mr. CAMPBELL. I respectfully disagree. The Federal Trade Commission is a most unique body, and it is empowered to express its——

The CHAIRMAN. I am aware of that.

Mr. CAMPBELL. To express its views in any given case before any federal court, and to fail to express its views in the most honest and complete way would not be to serve its function.

The CHAIRMAN. Would you inform me of how the case of Mobil's purchase of the reserves as opposed to the downstream refining and marketing and pipeline was before the court.

Mr. CAMPBELL. The acquisition is for all of Marathon.

The CHAIRMAN. That is right. It was for all of Marathon's assets, and the injunction you sought was against that particular plan. Now, if Mobil wanted to come forward with some change in plan, then they would come forward with the change in plan and the FTC would then litigate the antitrust validity of that particular plan; is that not so?

Mr. CAMPBELL. That is so.

The CHAIRMAN. So you have then put yourself in a position of being a volunteer setting forward matters which are not in litigation before the court?

Mr. CAMPBELL. Mr. Chairman, we are not the typical plaintiff.

The CHAIRMAN. In this you are a regular plaintiff.

Mr. CAMPBELL. Mr. Chairman, with respect I disagree.

The CHAIRMAN. When you have matters before the Federal Trade Commission, you are perhaps behaving as a Federal Trade Commission. But when you appear before the U.S. courts to appear as a litigant, you appear as a conventional litigant, not on matters that are not then before the court.

Mr. CAMPBELL. With respect, I disagree, and the reason why is in 13(b) of the statute.

The CHAIRMAN. You may disagree but you are dead wrong.

Mr. CAMPBELL. In 13(b) of the statute we may not go in for a preliminary injunction unless we are satisfied it is in the public interest. It is not the same standing as a private litigant has.

The CHAIRMAN. That may or may not be so. But you are litigating the question which is before the court, not some wonderfully abstruse question which does not at this time exist.

Now, some while back—my memory may not be as keen on it but I dealt with it more than a little bit, and the question of litigating the question of the takeover, the only thing that your agency had to do was to set forth those matters which were before the court, not some matter which might later arrive before the court by reason of change in behavior by Mobil or some change of pleading, and if that had occurred, then Mobil would have amended its pleadings, and you good folks, I assume, would have had the intelligence to amend your pleadings in like fashion.

I see no reason why you should anticipate matters which are not before the court and which have not yet occurred simply so that you can advise Mobil how they could best take over a corporation whose takeover you find not to be in the public interest.

You are propounding most curious law.

Mr. CAMPBELL. We are attempting, endeavoring to represent the public interest in this case by being as honest and forthright as we can as to what our antitrust problems are.

The CHAIRMAN. I think that is very nice but I would appreciate if you would deal with it by dealing with the questions before the court and not some abstraction that might later arrive before the court.

I have found in my brief career in litigating those matters before the court, it is not some abstract question that might through some unique chance arrive before the court, especially when my action constitutes a warning to the other side or a blueprint for them to engage in some behavior that is quite different than that which is before the court.

I find this indefensible and incapable of being defended by you or anybody else, no matter your brilliance.

The time of the gentleman has expired. The gentleman from Indiana.

Mr. SHARP. I thank the gentleman.

Mr. Chairman, I would first like to ask Mr. Campbell if he personally or the staff of the bureau he heads recommended the blueprint procedure to the Commission.

Mr. CAMPBELL. Yes, I did recommend that procedure to the Commission.

Mr. SHARP. Did you initiate that recommendation or were you simply consulted about it after the Commissioners came up with the idea?

Mr. CAMPBELL. It was initiated by myself and the Director of the Bureau of Economics.

Mr. SHARP. Thank you.

Mr. Baxter, do you believe there is a new wave of mergers in the country today?

Mr. BAXTER. I believe that there has been a gradual acceleration of merger activity commencing about 1972 that does not yet appear to have reached its peak.

Mr. SHARP. There is nothing in your judgment, then, that is more than incremental about this year and last year in this respect?

Mr. BAXTER. That is correct.

Mr. SHARP. And how about in terms of the capital that is going into merger and acquisition; is there anything that you see unusual or abnormal or different about that?

Mr. BAXTER. It is a very high level in constant dollars. I believe it is not quite as high as it was in 1968 and 1969, but it is at a high level.

Mr. SHARP. If the figures that we get from the Oversight and Investigations Subcommittee are correct, the implication would be there is a substantial increase in the dollars, and a rather significant increase in the percentage of firms engaging in this?

Mr. BAXTER. From what, increase from what?

Mr. SHARP. Well, for example, the dollar volume for, I believe, all of 1980 was $44 billion, and the dollar volume for the first 9 months of 1981 is $39.9 billion. I am sorry, I have the figures backward. The first three quarters of 1981 it soared to $60.8 billion. That exceeds the $44 billion in all of 1980, and if you compare it to the first 9 months of 1980, that was $30.9 billion. That seems like an increase to me.

Mr. BAXTER. There is no doubt that it has increased since 1980. It has been increasing since 1972, as I say.

Mr. SHARP. Professor Adams, do you have any difference of opinion on whether we ought to see this as something more than just a normal incremental increase?

Mr. ADAMS. Well, it certainly is more than the normal increase, not only in the number of mergers being negotiated but the size of the mergers. Once upon a time not too long ago the Federal Trade Commission used to list any acquisition above $10 million—$10 million—as a large acquisition.

What we are talking about now are $1 billion acquisitions. The proposed Mobil-Marathon acquisition is roughly $6.5 billion. United States Steel would be $6.3 billion. The Du Pont-Conoco was, I think, $7.5 billion, so the size of the acquisition is very significant, I think, and that is a new ball game.

If I may comment briefly, Mr. Chairman, on the point made by Chairman Dingell—am I interrupting your questions?

Mr. SHARP. I would like to make sure, Mr. Chairman, I get in a couple more questions.

Mr. ADAMS. I am sorry.

The CHAIRMAN. The Chair will assure you we will just not take this out of the gentleman's time, so in fairness, Professor Adams and Mr. Baxter, if you would each address the question, I think it would be useful.

Mr. ADAMS. Mr. Chairman, it seems to me that the fundamental issue before us is something that might be characterized as "corpocide," the killing of an independent corporation like Marathon with premeditation, deliberately, for no good economic reason, and for no good public interest reasons. Yet here we have the Federal Trade Commission, an agency of the U.S. Government, which in effect, as you point out, Chairman Dingell, is giving an advisory opinion to the perpetrators of this corpicide, namely Mobil, how

they can effectuate this killing without necessarily violating a narrow conception of antitrust prohibitions, by looking for horizontal overlaps in specific markets as if this indeed were the issue at hand.

This industry has to be recognized as being one which is dominated by a handful of large major integrated companies which play a dominant role in the industry, and to lose one major viable integrated competitor is indeed a serious loss.

And talking about signaling, I think it is terribly unfortunate that the Assistant Attorney General has announced, at least it was reported in the press, that the Justice Department may intervene in private antitrust suits on the side of the defendants, which is totally unprecedented, that is, the defendants to charges of monopolizing, conspiring, or violating the Antimerger Act.

It seems to me as I review antitrust enforcement, certainly in the last 10 years, that probably the most effective antitrust enforcement has come from private actions in the antitrust field, because these were powerful corporations which had adequate resources to prosecute their cases, and now the mighty U.S. Government is going to come in on the side of the defendants rather than on the side of the plaintiffs or staying neutral altogether.

If we are talking about signaling, this is a bad signal to give to a corporate community that seems to be intent on making hay while the sun shines.

The CHAIRMAN. The Chair can have a little extra time.

Mr. GORE. Mr. Chairman, I thought Mr. Baxter wanted to make a comment earlier on this.

The CHAIRMAN. Mr. Baxter, you certainly are welcome to comment on this matter too.

Mr. BAXTER. I would like to make several points if I could, Mr. Dingell.

The use of analogy is a very unfortunate device when one is talking about serious policy matters. It always serves as a substitute for thought and analysis. If this acquisition or any acquisition can properly be characterized as corpocide, then I suppose the transfer of the majority of the assets must represent manslaughter, and the transfer of any asset at all perhaps mayhem.

Mr. GORE. That is pretty good.

Mr. BAXTER. This, of course, means that there can be no transfers of assets, and that surely cannot be right. It would represent a per se rule against transfers of assets. It would bring the economy virtually to a halt.

These transactions have to be looked at as individual matters, as they come to an enforcement agency. I say nothing about the Marathon-Mobil merger, that is not before me, but I will recall the description I gave you of the Conoco-Du Pont case.

When we looked at that matter, we were troubled by a particular feature of it, namely, the joint venture between Monsanto and Conoco at the Chocolate Bayou. We essentially told the parties we would not approve this merger and they asked, "Why, what is bothering you?" and we said "It would be intolerable having Du Pont substituted as a party to that joint venture because of the relationship of Monsanto—the acrylic fibers and the nylon." And

they said "Well, we will fix that," and we said "All right, fix it, we won't accept promises, you have to fix it."

The CHAIRMAN. But you didn't do that in the pleadings, did you?

Mr. BAXTER. We did, indeed, Mr. Chairman.

The CHAIRMAN. In the pleadings?

Mr. BAXTER. The pleadings said we challenge this merger on the grounds that it violates section 7 because of the joint venture in Chocolate Bayou. DuPont fixed that problem and the problem was gone, and then we did not challenge the merger.

Now that is signaling, and I say that it is an inescapable aspect of law enforcement where there are particular features of a transaction that are troublesome and you challenge them on the grounds of those features. When they are fixed and you challenge no more, you have communicated information, but the notion that a law enforcement agent should not communicate information perhaps would imply that we ought not to have guidelines at all, because guidelines after all give companies blueprints as to how they can comply. I had always thought that one of the most fundamental features of a system of law and due process was that people could be told what violated the law and what did not violate the law, so that they would know how to conduct themselves.

The CHAIRMAN. The gentleman from Indiana.

Mr. SHARP. Thank you, Mr. Chairman.

I would like to return to the notion of what is happening in our economy today. The figures that we have been given suggest that there is a 100 percent increase in the dollar value of mergers in this country in the first 9 months, the first three-quarters of 1981 compared to the first three-quarters of 1980, and that 1980 was a record high year in terms of dollar volume of mergers.

Now Mr. Baxter, I asked you and you seem to think that this is an incremental event, and I take it that that in and of itself does not trouble you. You obviously have a responsibility to look at each individual case, but you have had experience in this field.

What I am asking you, as a policymaker, should this begin to trigger concern in the U.S. Congress, among the American public, in the Justice Department?

Mr. BAXTER. I do not believe it should. I think that when you convert the figures into constant dollars of any particular year, what you will see is that we are on the rising slope of another merger wave. The present level is not in excess of the level at which we were in 1968.

I would like to point out again that at that point in time there was an extremely harsh and restrictive body of rules in place with respect to mergers. I find it quite difficult to accept that as an important causal explanation.

How high this wave will go we do not know now, because there is no evident downturn yet. It may indeed prove to be a peak, but assuming that it is a peak, I would say nevertheless that merger activity in general is an important and healthy feature of a capital market. Any time one has very, very significant price changes in an industry, as we have had in the petroleum industry, for example, that will make new production techniques, the exploitation of new types of resources appropriate. It is also very, very likely to be accompanied by a reshuffling of assets so that, given the new price

structures, given the new relevant technologies, those assets will once again find themselves in the hands of those who can deploy them most efficiently and with the greatest good to the general public.

Therefore, it does not surprise me that very rapid changes in oil, with the decontrol of the petroleum industry that we have seen over the last few years, should shortly be followed by a reshuffling of assets, and in a large proportion of instances that will take the form of corporate mergers.

Mr. SHARP. Then I trust you oppose Mr. Brown's bill or any other bill that is similar that puts a moratorium on the giant oil companies from buying the second-tier oil companies?

Mr. BAXTER. I am not authorized to express an administration position on that matter. Speaking for myself, I would not think that such a moratorium was well-advised.

Mr. SHARP. Can you give me any suggestion at what point I, as a congressman and representative of people who are very concerned about having a competitive marketplace out there, ought to be concerned about developments in the oil market?

Mr. BAXTER. I think you should become concerned when the levels of concentration in any particular segment of the industry rise to the level that suggest that collusion and coordination is a realistic possibility.

Mr. SHARP. And you don't see that on the horizon.

Mr. BAXTER. No, I do not. I regard the oil industry as relatively unconcentrated in comparison with many of our industries. Many industries that are far more concentrated behave in a perfectly competitive fashion.

Mr. SHARP. So what is happening in the marketplace today in terms of mergers would not cause you to have a task force in the Justice Department to recommend new policies to the President or anything of the sort?

I mean you are quite comfortable with what is happening?

Mr. BAXTER. I am comfortable with the general phenomenon, which of course does not mean that each of its individual instances is not troublesome. We have challenged a number of mergers since I have been at the Justice Department. I am sure we will find more that are troublesome, but the general phenomenon I do not find troublesome.

Mr. SHARP. Mr. Campbell, can you help me? Do you think that the marketplace is simply doing just a little bit more of what it has been doing in terms of mergers, or do you see us on the brink of a new wave or the edge of a new wave? How do you characterize the world as you see it at this moment?

Mr. CAMPBELL. I think one would have to admit we have more merger activity now than in the recent past. One factor that has not yet been focused on in today's discussion has been the tax laws.

For example, the tax benefits of any company that acquires the reserves of a Marathon and steps up the basis to today's market price and then can depreciate them are tremendous.

Mr. SHARP. You are talking about the new tax laws now?

Mr. CAMPBELL. I am, but even under the old tax laws; the new ones make that even more attractive, and those are not antitrust

concerns. Those are reasons perhaps why we see these mergers which are unrelated to antitrust.

Mr. SHARP. So it would seem logical to assume that we are going to see an actual increase in mergers now on the heels of the new tax law?

Mr. CAMPBELL. I think that anything which makes the tax deductibility of a stepped-up base resource more quick, which would be one of the effects of the proposed tax changes, would make a merger more attractive. I do not say whether that is good or bad. That is simply an observation as to what is likely.

Mr. SHARP. Let me ask you a question as an economist.

You testified that size in and of itself is not necessarily negative. It can be positive or negative, depending upon the given industry or organization, and I think most of us can understand that. But there is a larger economic question that some of us are having difficulty coming to grips with, and that is where is capital going in this society of ours? A great deal of discussion has gone on that it must go into improved productivity, research, and development, all kinds, especially in the oil industry of exploration and development.

Is there no risk, as an economist, perhaps this would not be in violation of the antitrust laws, that too much of the capital is going into organization, reorganization, takeovers, empire building, which might well be better spent from an efficiency point of view.

When $12 billion in 1981 goes into acquisitions, not all of that is for oil but, with high enough existing oil reserves, of course it is one way for an existing firm to add oil to its reserves. However, to the country it doesn't mean a hell of a lot.

Mr. CAMPBELL. Again speaking just for myself and not for the Commission, I think you are right in saying that it is a possibility. But note that before you can say that possibility is a reality you have to be willing to say that the market itself has some imperfection, that somehow your judgment, which might be right, but your judgment is better than the marketplace's as to where those assets should go, because the market will indicate best use by bidding up the price of a particular resource.

Mr. SHARP. The private market people have been telling us where the money would go if we passed the tax bill and telling us where it would go if we deregulated the oil industry. That is what we were told, where it would go. They never told us it would go into buying up existing oil companies. That was never in the litany of the testimony before the Congress by the oil industry in this country, nor by the Reagan administration, nor by the Carter administration.

Mr. CAMPBELL. Well, I don't speak for either administration. We are an independent agency, but I find it very surprising that no one would anticipate that coming out of regulation would not be——

Mr. SHARP. Let me suggest a lot of people anticipated it, but I am telling you a lot of people here testifying and asking us to do this, they were not the ones testifying to that. They told us it would go into exploration and development. They told us it would bring down oil prices because it would bring more oil into the market.

They told us a lot of things, and we are waiting to see them happen.

Mr. CAMPBELL. In fairness I could not comment on what the gentleman has been told.

The CHAIRMAN. The time of the gentleman has expired.

Gentlemen, I just read here some testimony in response to some questions that were raised. As a matter of fact, Mr. Baxter, these are your responses so you should listen with some care. It says:

> Your question 3 takes note of my testimony to the effect that increase in cash flows is not likely to increase significantly the number of acquisitions that the petroleum companies would otherwise have made over the years ahead. You ask how I would reconcile that observation from the minutes of the Board of Directors of the Sun Oil Corporation. The quotation is to the effect that the chairman of this particular corporation, anticipating the outflows of cash from current business, thought it appropriate to incorporate strategic plans for major acquisition opportunities to utilize cash available. I see no conflict to be reconciled.
>
> I did not testify that no mergers would occur or even that augmented cash flows would reduce the attractiveness of mergers otherwise financially appealing, although increased cash flows due to decontrol may increase the desirability of investments in oil and gas relative to mergers.

Now what appears here is that we have a situation where decontrol, the tax laws have increased the cash availability of the giants of the industry which are now pooling up billions of dollars in funds either to protect themselves against takeover, or go out and take over some other poor soul, is causing a wave of mergers throughout this industry, not of the relatively small corporations but of the very large corporations taking over almost as large corporations or larger corporations taking over very large corporations, and we see that the amount of money available to it, rather to these corporations to engage in this kind of activity, has gone up by about 1⅔ times.

Now Mr. Baxter, what do you have to say to that?

Mr. BAXTER. I would say again that I don't believe that the change in the magnitude of the cash flows to the companies has been a significant factor in the acquisition activity. Indeed, to a very considerable extent, they have not been using internally generated cash. They have been using lines of credit from the capital markets, and mergers occur where mergers appear to the managements to be relatively profitable. If they had smaller cash flows, they would be resorting to the capital markets in greater degree.

I would also like to say that one must keep sight of the fact that the fact that $12 billion are spent on mergers in no way diminishes the capacity of the economy, in no way makes it more difficult for the same level of R. & D. activities, for the same level of drilling to go on. Those are mere paper transactions.

The capacity of the economy to engage in that kind of investment depends on the availability of real resources, which are very different things than credit. The capacity of the economy to engage in R. & D. or exploration or other activities is substantially unaffected by merger activity.

Mr. GORE. Will the gentleman yield on that?

The CHAIRMAN. Excepting that the corporations that have engaged in this kind of exercise have less cash and less ability to themselves engage in the activity of exploration, because they have dissipated a percentage of their capital; is that not so?

Mr. BAXTER. To the extent there are capital markets that can be drawn upon for lines of credit, it makes relatively little difference whether the companies' present positive cash flow is high or very high. They must, of course, be solvent borrowers, but I don't think there is any reason to think that their large positive cash flows—as opposed to the changes in their overall asset positions that resulted from decontrol and deregulation of the industry—is a significant causal factor in the activity that we are now observing.

Senator PACKWOOD. But, Mr. Attorney General, their extraordinary lines of credit are partially due to their large cash flows.

Mr. BAXTER. Extraordinary lines of credit would be available so long as their asset positions were strong, and their asset positions were enormously strengthened by the increase in world crude oil values, and therefore, the values of their domestic reserves, and of course their foreign reserves as well. A bank will lend money on a favorable asset position as well as on a very high present positive cash flow.

Senator PACKWOOD. Mr. Attorney General, I could not disagree with you more.

When we were discovering, going through the windfall profits tax debate, the argument was made these companies simply did not have enough cash, they could not invest it in research and development, they were desperate, and against my better judgment the bill was passed significantly diminishing the windfall profits tax bill.

At that time the Finance Committee offered the oil companies a plowback provision, and if you wanted to put your money back into energy development, you could write it off totally and it wouldn't be subject to the tax. They didn't want that. It is now clear why they didn't want it. They didn't intend to put their money in energy, and with the plowback provision they were limited to putting it in energy, and when you give a company, and you quote the Sun Oil, more cash than they can use for their current operating expenses, what on earth do you expect them to do with it except acquisition?

Mr. BAXTER. I would expect them to invest it in the most profitable investment vehicle available to them. Sometimes that will be an acquisition, sometimes that will be an expansion of their own facility. Sometimes it will be a distribution to shareholders.

One of the problems, of course, is that distribution to shareholders is quite unattractive, because of the structure of our tax laws. The funds are taxed once at the corporate level and then again at the distribution level.

It is perfectly true that that feature of our tax laws tends to trap funds within corporations, and change the pattern of distribution both in favor of diversification, in favor of acquisitions, and even in favor of what would fairly be judged as noneconomic expansion such as additional drilling.

Senator PACKWOOD. I would come down on a different side. I think the oil companies rode roughshod over this Congress for 30 or 40 years and they see nationalization going on throughout the world, and they gradually want to hedge their bets by getting out of the energy field, or sufficiently diluting their involvement in it, so that if indeed the pendulum ever swings the other way against them because of their incredible conduct, that they have their bets

hedged and that is why they are putting their money in nonenergy areas.

Be that as it may, Mr. Campbell indicated personally, not speaking for the Commission but personally, he would welcome a 12-month study by the Federal Trade Commission in a moratorium during that time.

What are your personal views? I am not seeking here that you testify for the administration.

Mr. BAXTER. My personal views are that more study of almost any important economic phenomenon is always desirable. I would think that where we had the necessary kinds of data, a sufficiently large number of observations to be able to draw generalizations about the present oil industry activity, that would be a very desirable activity.

I am not at all clear that we will have an adequate sample size, an adequate number of observations within the next year or indeed within the next 2 years to do careful work of that kind, but I would certainly favor its being done just as soon as sufficient data is available to do it.

Senator PACKWOOD. Thank you.

Mr. Campbell, let me ask you a question. Will you explain for the record exactly what the alleged arrangement is between Amerada-Hess and Mobil.

Mr. CAMPBELL. I will try my best, Senator. With your permission though, I would like to correct. I must have misled you.

I did not support even personally the moratorium. I did support the study.

As to Amerada-Hess, the proposal is still in a state of flux, but as I am able to describe it now, to the best of my ability, it is suggested both by Mobil and Hess, that Amerada-Hess would acquire the refining pipeline terminaling assets and distribution assets of Marathon, the one exception being the gathering pipelines which bring crude oil from wells into refineries, and Mobil would retain the rest.

Senator PACKWOOD. Now Mobil gets the reserves?

Mr. CAMPBELL. That is correct.

Senator PACKWOOD. Hess gets the rest. Marathon is a principal supplier of independent wholesalers. What guarantee is there that either out of the reserves that Mobil keeps, or out of Amerada-Hess's operations, that those independents would still get gasoline?

Mr. CAMPBELL. I welcome the question, because it gives me an opportunity to focus again on the word "viable" in our decree. That again is a factor which will be of great concern to the Commission before any proposal would be viewed as maintaining a viable competitor.

To be fair, there is no guarantee that Marathon will continue to supply the independents.

Senator PACKWOOD. Except Marathon has a track record of supplying them. I will grant you they can change whereas Amerada-Hess is not involved very much in that business at all.

Mr. CAMPBELL. And it is my judgment, Senator, that Marathon would continue. I agree with you but my point is——

Senator PACKWOOD. What you have is a pig in a poke with Amerada-Hess as to whether or not they will continue that supply.

Mr. CAMPBELL. Hess will be a new entrant particularly in the geographic area, into gasoline marketing. They are heavy in crude, in the heavier distillates, and they make the following point, which I think is worthy of some consideration: that as they are a new entrant, they do not have their own distribution system.

Marathon is a proved profit center. The most likely economic conduct, no guarantee, but the most likely would be to do as Marathon did.

Senator PACKWOOD. Where would Amerada get the crude that Marathon has that they supply and use to supply the independent?

Mr. CAMPBELL. Amerada proposes to purchase upon the world market and to draw upon its present reserves, which are about 50 million barrels.

Senator PACKWOOD. In that case, why don't they get into that market now?

Mr. CAMPBELL. They don't have the distribution. Again I am not trying to carry a brief for Amerada-Hess, but my recollection of their presentation to me; that presentation is that they don't have the distribution system for gasoline marketing as of the present time.

The CHAIRMAN. Would you yield?

Amerada is most known as being crude poor. They get their crude down in the world market mostly in Venezuela, and they are principally a supplier not of gasoline and light heating oils, diesel and so forth, but are principally a supplier of residual fuel oil to the electrical utilities and the industries in the northeastern part of the United States.

Isn't that so?

Mr. CAMPBELL. That is so.

The CHAIRMAN. Now how much crude did you say or what did you say the reserves of Amerada-Hess are?

Mr. CAMPBELL. Forgive me for not having it accurate. Indeed I prefer to withdraw it and submit it more precisely.

The CHAIRMAN. You can submit that.

Mr. CAMPBELL. That was in storage.

The CHAIRMAN. You can submit it or we will get it ourselves.

Mr. CAMPBELL. I will be happy to either way, but that was their storage facilities. We are investigating Amerada-Hess. The Commission has not made any decision on it, but my present state of knowledge is very close to what you have just said, Mr. Chairman.

The CHAIRMAN. They have relatively piddling reserves. What they really have to do is rely either on contracts which they might have, or else on the spot market, would they not?

Mr. CAMPBELL. That is consistent with what I know as of the present time.

The CHAIRMAN. And as a matter of fact, to get substantial increases in supply, they would have to go out and get spot contracts as opposed to getting long-term contracts, would they not?

Mr. CAMPBELL. That is also consistent with my present state of understanding.

The CHAIRMAN. So that means then that Mobil would get the reserves of Marathon, which they could release either through their own outlets or just sit on or sell through somebody else's outlets, would they not be able to?

Mr. CAMPBELL. They would be able to do whatever they wished with the reserve they acquired.

The CHAIRMAN. Now Mobil has a history of selling virtually zero product through independents, do they not?

Mr. CAMPBELL. That is correct.

The CHAIRMAN. Is there anything other than the most prayerful hope that would inspire us to the belief that that might change and that they might continue to make available the supplies of produce through the unbranded and the independent marketers that are now being made available using Marathon as the original source of product?

Mr. CAMPBELL. Mr. Chairman, Mobil made that argument to me, and I disagreed with it, and therefore I recommended to the Commission that that was not an argument I could grant. But in fairness, they did present the argument that they would attempt to distribute as a profitable profit center as Marathon had, but I disagreed with that.

The CHAIRMAN. Kipling has an excellent poem about the bear that seems to be applicable in this particular instance, and I apologize to my colleague.

Senator PACKWOOD. Mr. Attorney General, do you think that size, in and of itself, ought to be a factor in either antitrust enforcement or antitrust legislation?

Mr. BAXTER. No, I do not.

Senator PACKWOOD. So that you take every case as it comes along and look at it from a prospective standpoint of—will it adversely affect competition or restrain trade, whatever the standards may be, but always looking at them prospectively based upon a proposed merger?

Mr. BAXTER. That is correct.

Senator PACKWOOD. And under no circumstances should we pass any laws saying that once you get 40 percent, 50 percent, 60 percent of the market, that per se is too big, and you shall be broken up?

Mr. BAXTER. Mr. Chairman, you just made a very, very important shift. When I think about the size of a corporation, I think about the dollar value of its assets or number of employees it engages. You shifted to percent of the market.

Senator PACKWOOD. Should there be a factor by market?

Mr. BAXTER. Percent of the market is an important factor, although I do not think we are ready to embody it in a statute. I do not think we really know enough, but obviously that will be one of the things that is featured prominently in our new guidelines. I think it is a highly relevant circumstance. I stress again there is no necessary relationship between percentage of market and aggregate size.

Senator PACKWOOD. I understand that. There are some companies that have a very dominant position in the market and the market is a very small market.

Mr. BAXTER. The only theater in town.

Senator PACKWOOD. That is right. I meant to phrase it in both senses. One was as to size alone, the other as to market share. If market share, you say well possibly.

Mr. BAXTER. No, I do not say possibly. That is an extremely important circumstance, perhaps the most important single circumstance, although not the only circumstance. But again I would think it is unwise at this point to try and capture some one particular number in a statutory formulation, particularly in view of the number of other factors that must also be taken into account.

Senator PACKWOOD. I take it, then, from your answer, that you would not envision statutory definition that would limit conglomerate mergers, per se.

Mr. BAXTER. I would not.

Senator PACKWOOD. To the best of your knowledge, would you have handled the Marathon case differently or the same as the Federal Trade Commission?

Mr. BAXTER. I am very reluctant to answer that question, Mr. Packwood. Not having had that among my responsibilities, and having responsibilities that fully occupy my attention and my talents, I have not followed the Mobil-Marathon episode with more than a usual newspaper reader's level of attention. I am not aware of any activity on the part of the Commission that I would regard as a demonstrable error. But then, not being familiar with what has been done in great detail, I really prefer not to comment.

Senator PACKWOOD. Professor Adams, let me ask you a question, if I might. You indicated in your statement the belief that if Mobil acquires only Marathon's oil reserves, competition will still be diminished in the exploration and development of crude oil reserves. Can you elaborate on that?

Mr. ADAMS. Well, Senator Packwood, as things stand now, Marathon is engaged in independent—is engaged in exploration and development of crude oil reserves. If Marathon were to disappear from the scene, a major, viable, integrated competitor would be lost to this industry which in my view, contrary to that articulated by the Assistant Attorney General and by Mr. Campbell, is not as competitive as we might expect the industry to be.

And in their statements, I think it is fair to say that they have emphasized the private advantage to the acquiring corporations of engaging in these mergers. But they have not indicated the penalty to the public interest that flows from these mergers and acquisitions.

Senator PACKWOOD. You also indicated that the Mobil-Marathon merger, if it goes through, if it certainly goes through as presently planned by Mobil, it is going to trigger a rash of other acquisitions. Do you want to pinpoint that a little more?

Mr. ADAMS. Well, again, my only information on that comes from the press. I read the Wall Street Journal with biblical piety on a daily basis, and that seems to be the indication in such print media as the Wall Street Journal, Dun's Review, Forbes, New York Times, et cetera. And on the theoretical basis, this makes very good sense, to expect precisely that kind of phenomenon.

Senator PACKWOOD. Thank you.

The CHAIRMAN. I am curious. Perhaps, Mr. Baxter, Mr. Campbell, also you, Professor, if you could tell us what is the relative strength of an oil company which is strong in marketing, but has very inadequate reserves with which to provide the full flow of product through the outlets which it holds, and what is its relative

strength in the marketplace in good times, and what is its relative strength in the marketplace in times when there is some kind of an interruption or distortion in the oil market that occurs periodically.

Mr. ADAMS. As I tried to point out in my statement, Mr. Chairman, the industry is dominated by the vertically integrated major companies.

The CHAIRMAN. And the crude rich companies.

Mr. ADAMS. Exactly.

The CHAIRMAN. And not by the crude poor companies, like Sohio or Ashland and Amerada, is that right?

Mr. ADAMS. And that creates a tremendous problem for non-integrated operators in any branch of the petroleum industry. There is no such thing as a free competitive market in crude oil. Crude oil is controlled by the major companies, and largely through long-term contracts. The spot market is a very relatively small segment of the total market for crude.

The CHAIRMAN. Which tends to undergo very wide swings.

Mr. ADAMS. It certainly does.

The CHAIRMAN. From very soft to mostly enormously hard and well above the long-term contract market price.

Mr. ADAMS. There is no question about it. Therefore, a nonintegrated petroleum refiner, for example, lives almost at the mercy of and at the sufferance of the major oil companies and the suppliers of crude oil.

The CHAIRMAN. Mr. Campbell, Mr. Baxter.

Mr. BAXTER. The question is not an easy one, Mr. Chairman. I would have to say the following things. One would have to be sure of the extent to which there were real economies involved in vertical integration. If there are real economies involved in vertical integration, then of course a company that does not take advantage of them will be at a competitive disadvantage.

The fact that we see a number of nonintegrated companies out there that have survived for a long period of time gives us a good deal of assurance that, at least in the past, the economies associated with vertical integration are not so subtantial that these companies are at a major competitive disadvantage.

Whether that is changing now or is likely to change in the future, I do not know. But if it is true that there are no significant economies associated with vertical integration, then it follows that it makes very little difference whether they are integrated and have their own petroleum supply or whether they buy on open markets.

If the market price rises rapidly, they of course will have to pay more. In a narrow bookkeeping sense the integrated companies do not have to pay more. But that is a very misleading way to look at it. Every time an integrated company uses a barrel of petroleum internally, it forsakes the opportunity of releasing it to the open market. Therefore, the opportunity cost for the integrated companies is precisely the same as the opportunity cost for the nonintegrated company.

But as I say, the key question is whether there are substantial economies of vertical integration. As I say, there is little reason to

think so on the basis of past behavior. Conceivably that could be changing.

Mr. ADAMS. Mr. Chairman, I do not want my answer to be misunderstood. I did not argue that there were economies to vertical integration. What I am suggesting is that great economic power attaches to the integration by the major oil companies. The power to discipline, and, if they so choose, to eliminate independent nonintegrated firms in some branch of this vertically integrated structure. It is economic power, not the efficiencies of vertical integration, that are at issue here.

The CHAIRMAN. I think that is precisely the point. We saw this in the early 1970's when we had to pass the Emergency Petroleum Allocation Act, because small refiners, people like Ashland and some of the others who were not crude rich were literally unable to get crude for their refineries to flow down into their distribution.

We found then that the only thing that kept those parts of the industry in business was essentially Government intervention in the marketplace. You can intervene in the marketplace in several ways. You can prevent the situation from occurring through mergers, and so not have to go in and later intervene in the marketplace, which I think is a very bad thing to do. Or else you can let the situation arise where you have a few companies who have all the crude, then have to go in and either allocate or deal with it the way you had to go after the original Standard Oil trust.

Mr. BAXTER. The reason it was necessary to allocate in 1972, Mr. Chairman, was that there were price controls in effect.

The CHAIRMAN. No, that is not so.

The original Emergency Petroleum Allocation Act was put in place because the small refiner and small distributors could not get product. And they could not get crude. The President later put in place price controls and allocation controls using those two statutes. But the statute was originally passed, and I sat, not in this chair but not too far from it, the statute was originally passed because a lot of small refiners simply could not get crude. And a lot of small refiners and wholesalers could not get product.

Mr. BAXTER. I was under the impression, Mr. Chairman, that prices were frozen on August 14, 1971, and remained frozen until November 14, 1971. There were price controls in effect thereafter.

The CHAIRMAN. The authority under which that was done however were two statutes, one was a price control statute and one an allocation statute.

Mr. BAXTER. I understand that, Mr. Chairman. My statement in response to Senator Packwood was that if there is a free market in petroleum, even the allocation problem will not arise because the opportunity cost for the integrated companies for using a barrel of their own crude is the same as the opportunity cost for acquiring a barrel on the open market by the nonintegrated companies.

The CHAIRMAN. Let's see how the free market is affected here if we have the kind of situation we are talking about taking place. Mobil ranks fourth in terms of motor gasoline sales. Marathon ranks 12. The combined rank is 1. Curiously enough, Marathon markets about 60 percent of its product in gasoline and heating oil and so forth through independent refiners, who I believe serve a useful function in providing competition in the marketplace selling

at 3 to 7 cents lower per gallon on the particular commodities referred to.

If you say to the resulting merger that we do not have any objection if the resulting merger takes the crude from Marathon, puts it into Mobil, and leaves the outlets, the pipeline and the downstream and refining to be picked up by somebody like Hess or anybody else, I am not sure whether you have entered a free market. I am willing to listen to you say so if you wish, but I do not think you will

Mr. BAXTER. I have not studied this particular acquisition, Mr. Chairman, with the care that would enable me to make a judgment about it. I do know that the integrated refiners do, to some degree, sell to the unbranded stations from time to time. They have not traditionally been the regular suppliers of those stations. I have no reason on the basis of anything I know to suppose that supplies to the independent stations would dry up as a consequence of this——

The CHAIRMAN. You are not going to sit there and tell me it would be enhanced, are you?

Mr. BAXTER. I do not think they would really be affected on the basis of my present——

The CHAIRMAN. Can you sit there and make me the balanced statement that if this merger takes place, the independents are going to continue to get the same supply under the circumstances as they do now?

Mr. BAXTER. In the absence of price controls, I think that is likely.

The CHAIRMAN. You are making that as a flat prediction that if we allow the merger to go through the independent refiners will continue to get supplies of gasoline and heating oil in the same quantities under the same terms they are getting it now? You are making that flat statement, are you?

Mr. BAXTER. In the absence——

The CHAIRMAN. I am just asking you for a flat statement. Let's not talk about in the absence or in the presence of. Are you going to tell me they will continue to get the supply in the same quantities they are getting it now?

Mr. BAXTER. Yes, I would if price is not controlled.

The CHAIRMAN. Where are they going to get it?

Mr. BAXTER. They are going to get it from refiners who will be looking for distribution for their gasoline.

The CHAIRMAN. You are going to pull the entirety of Mobil's, you are going to pull the entirety of Marathon's supply of crude into the control of Mobil, which has a tradition of not distributing through independent nonbranded marketers.

Mr. BAXTER. They have a number of outlets whose capacity they have been supplying with their existing crude. They are obviously going to have to find additional outlets if they have additional crude.

The CHAIRMAN. Or they can sit on it.

Mr. BAXTER. It is very expensive to sit on and delay the date of capture of revenues.

The CHAIRMAN. They are buying crude in the ground in the form of reserves that is worth something like $180, for somewhere between $80 and $120, depending on which offer and whose estimates

you want to take. That is a mighty good buy. It also would yield very large profits. They figure at this time they can sit on it, or they can increase their own outlets, can they not? There is nothing says they have to feed that product through some independent nonbranded merchandiser, is there?

Mr. BAXTER. There is nothing that says they must. No, there is not. One can imagine a wide variety of actions that are serious losers to a company's bottom line that any company might take with fairly serious social consequences. The frequency with which companies fail to maximize profits and whimsically incur substantial losses for the purpose of doing that kind of harm I believe is very rare.

The CHAIRMAN. I am much comforted by the trusting character of our Antitrust Division.

Mr. CAMPBELL. Mr. Chairman, originally you addressed the question to both of us. It was a simple question. I think I can give a simple answer. Is access to crude an important factor in determining whether there will be competition by these independents in retailing, or by anyone who takes the downstream of Marathon? The answer that the Commission has come to is absolutely yes. That is why the phrase on viability was written into the complaint for injunction—it is not enough that the downstream assets be spun off, which would on paper solve the percentage overlap. It must be to a competitor who would be a viable competitor in all of the markets that we define.

So the Commission has focused on that precise point. Before anyone is approved those questions will have to be satisfactorily answered.

Senator PACKWOOD. Let me ask Mr. Barré, what is going to happen to Marathon's present customers if the Mobil-Hess goes through.

Mr. BARRÉ. Mr. Chairman, that is of course very difficult to predict. My own personal view is that there would be a dramatic change in the marketplace. I do not think that another company, simply taking over facilities, would necessarily have the same outlook and attitude.

Senator PACKWOOD. They are not taking over the crude.

Mr. BARRÉ. That is correct. It would be much more difficult in my opinion for our refining, marketing and transportation facilities to be adequately and competitively operated without the backups that we now have.

Senator PACKWOOD. Put it in this exact perspective. Let's say nothing was going to happen in this takeover except Hess was going to take over your crude oil reserves. Would that make it more difficult for Marathon to continue their present method of selling?

Mr. BARRÉ. It certainly would, without question.

Senator PACKWOOD. It would make it impossible, would it not?

Mr. BARRÉ. Perhaps not impossible but extremely difficult. Our whole system is balanced.

Senator PACKWOOD. You would have to depend upon getting crude willy-nilly wherever you could, via the spot market or elsewhere, if you did not have your own reserves.

Mr. BARRÉ. That is correct.

Senator PACKWOOD. Where would you get it?

Mr. BARRÉ. Well, there is only one place, and that is the open worldwide market. And how available it might be is a big unknown.

Senator PACKWOOD. So as far as your customers, the independents, about 60 percent of your output, they would be entirely dependent upon your ability to pick up contracts around the world. If you were successful you would hope to continue your present marketing pattern. If you were not, you could not.

Mr. BARRÉ. Absolutely and without question that is true.

The CHAIRMAN. And would you not also be dependent under those conditions not only upon the levels of supply, but upon enormous price swings?

Mr. BARRÉ. Well, certainly, I would think that if you are entirely on the spot market, that is a very volatile market. And as you well know, prices rise and fall over periods of time. So, yes, it would have an effect on our ability to compete.

The CHAIRMAN. A goodly portion of that would have to be in refined products you get out of the Rotterdam market as opposed to crude you run through your own refineries.

Mr. BARRÉ. At least provide products produced elsewhere.

The CHAIRMAN. Thank you. The Chair recognizes our good friend and colleague from Oklahoma, Mr. Synar, who has waited most patiently.

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. Baxter, given the traffic that has gone through my office in the last week-and-a-half on this issue, it appears the Justice Department is probably the most casual observer to this whole thing. What would it take to stimulate the interest of the Attorney General's office in this whole issue of mergers?

Mr. BAXTER. I am not certain whether you are referring to the Mobil-Marathon-United States Steel episode——

Mr. SYNAR. In the whole merger game altogether, what will it take to stimulate your interest?

Mr. BAXTER. Our interest is and always has been very high.

Mr. SYNAR. From all the testimony I have seen and the recent publicity, it seems like you are taking this very casually. I was wondering whether there was a demarcation line where you all get very concerned about this.

Mr. BAXTER. We get very concerned about mergers whenever the combined market share of the companies is substantial and the situation is one which poses difficulties or potential competitive injury.

Mr. SYNAR. Let me ask Mr. Campbell. Based upon what I perceive as a very casual attitude in the Justice Department, and Congress potentially not passing a moratorium as offered by our colleague from Ohio, what kind of signals are we sending to second-tier companies, and what kind of a reaction do you think we can expect from them?

Mr. CAMPBELL. Well, the principal signal that the Federal Trade Commission has sent to the second-tier oil companies and to the market is represented in our filings in the Federal district court in Cleveland. We have sought to enjoin Mobil's acquisition of Marathon.

Mr. SYNAR. Let's say the legislation we are considering is not passed. Given the Attorney General's position that they are really not that interested in it right now, of those companies not involved presently—but potential targets—what can we expect as a reaction? Any protectionist policies?

Mr. CAMPBELL. I would hope they would look at the actions of the Federal Trade Commission and recognize them for what they are, a very conscientious and careful protection of those middle-tier oil companies who might be the targets of acquisitions which violate section 7 of the Clayton Act.

Mr. SYNAR. In other words, you think the signals sent out by the FTC will be sufficient to calm their fears of potential takeovers?

Mr. CAMPBELL. I could not speak to what will calm their fears, sir. I am sorry.

Mr. SYNAR. You are aware that, even though they are not presently involved, there are a number of companies which are sitting on pins and needles right now awaiting the outcome of not only your suit, but the legislation pending here, and the casual signals sent out by the Justice Department. You are aware of that?

Mr. CAMPBELL. I am. And the Federal Trade Commission in my judgment can do no more than it has done, which is to spend the resources to study it with great care, and then move to enjoin in Federal court, as we have done.

Mr. GORE. Will the gentleman yield to me briefly?

Mr. SYNAR. Let me ask the same question of Dr. Adams and then I will be more than happy to yield. I asked Mr. Campbell if there was any particular reaction we can expect out of other companies which are not presently being targeted, but which could be targeted companies. Is there any type of activity that we should look for, given the casual attitude of the Justice Department and based upon the fact that we may not pass the legislation pending. Is there any kind of activity that we should look for with some of these second-tier oil companies?

Mr. ADAMS. Well, Congressman Synar, as I indicated in my statement, we have one bit of evidence; namely, that some petroleum companies, in particular, have established lines of credit for the specific purpose of making undisclosed acquisitions. And there are certainly plenty of rumors in the press to that effect.

And from their own point of view, it would make good sense to engage in these "defensive" mergers and acquisitions in response to any projected acquisition by Mobil of Marathon.

Mr. SYNAR. I will yield to the gentleman from Tennessee.

Mr. GORE. I thank my colleague. I know he has been patient and the rest of us have talked a lot, but I just wanted to address this matter of the signal sent. If you look at the instructions contained in the FTC document, referred to earlier as a blueprint, my quarrel is with the signal contained in that blueprint. I think that what it says to the middle-tier companies is that it is OK to buy up the reserves of other companies so long as you sell off the other assets.

And I think the effect of that signal is to scare the middle-tier companies and others in the economy to gobble up smaller companies so they can get too big to swallow. And I think you are seeing that process reflected in the 100 percent increase in merger activity and acquisitions this year.

I thank my colleague for yielding.

Mr. SYNAR. I think that the gentleman from Tennessee makes a good observation. What you are basically saying is, and what I was trying to get to: Are we looking at a domino effect here, that the biggest go after the middle, and the middle go after the smallest? Are we looking at a chain reaction that potentially may have as much impact on the economy as the majors going after the middle-tier?

Mr. ADAMS. And Congressman, every time there is a proposed acquisition, the way the game is played, you get the so-called White Knight appearing on the scene. That is, a company which becomes the objective of a hostile takeover then looks for a White Knight to save it from that kind of rapacious aggression, if I may call it that.

The example of Marathon is a good one. Why should Marathon have to turn to United States Steel as a White Knight? What are the qualifications from an economic policy point of view to have United States Steel take over Marathon? Why not have Marathon an efficient competent company with adequate resources to do the job it has to do in the petroleum industry as an independent, viable, integrated competitor in that industry?

It does not make any sense. And now we have the ultimate absurdity, and, again, of course, this is a rumor in the press, that Mobil plans to buy 25 percent of United States Steel if United States Steel succeeds in taking over Marathon.

Mr. SYNAR. Thank you, Mr. Chairman.

The CHAIRMAN. Well, we have a couple of other questions like here in the recent exchanges that have transpired that the Chair finds troublesome. The first is the question of takeover of Marathon's reserves by Mobil and the takeover of its other facilities by Amerada-Hess. The question is, How is that different than just having Mobil take over Marathon by itself?

Mr. Campbell.

Mr. CAMPBELL. Mr. Chairman. We have antitrust concerns if Mobil acquires Marathon, because they are both present in the same important geographic markets in the wholesaling of petroleum products. I do not wish to speak to Amerada-Hess. With your permission, let's say some speculative other partner, who would not present those overlaps, who would not be in direct competition with Marathon. I do not know if that is true of Hess.

The CHAIRMAN. If the supply of products is lost to the independent nonbranded markets now depending on Marathon, would you continue to have an antitrust question?

Mr. CAMPBELL. Yes.

The CHAIRMAN. You would?

Mr. CAMPBELL. I would.

The CHAIRMAN. Now, is the takeover of Marathon by Mobil in some way sanitized by the presence of Amerada-Hess?

Mr. CAMPBELL. I would not use that term. And again, I do not wish to speak to Hess.

The CHAIRMAN. I will let you use your term, Mr. Campbell. I am not sure that is the right term either.

Mr. CAMPBELL. Without speaking to Hess, let's suppose again, because I do not know it is true of Hess, would it be different if the takeover were by a company that did not directly compete with

Marathon in the relevant markets that we have defined, the answer is yes, it would, so long as that company was a viable competitor in those markets.

Let us suppose that a partner with Mobil acquires Marathon, and this partner takes the downstream assets, and this partner has no overlaps with Marathon in the geographic markets, the product markets that we have defined. Then, so long as that partner is a viable competitor, we would have no antitrust objection.

The CHAIRMAN. Well, let's assume that you simply removed, then, the Marathon outlets from their current marketing area, without necessarily having them move over to some new third person. That would cause antitrust questions, would it not?

Mr. CAMPBELL. That would what?

The CHAIRMAN. Reduction of the outlets on both the wholesale and the retail level by loss of Marathon's outlets in their current area of service would cause antitrust questions, would it not?

Mr. CAMPBELL. Yes.

The CHAIRMAN. And a reduction of competition in Marathon's current service areas would also cause antitrust questions, would it not?

Mr. CAMPBELL. Yes, it would.

The CHAIRMAN. Mr. Baxter, do you have any comments on those points?

Mr. BAXTER. No, Mr. Chairman. I would agree with Mr. Campbell's answer.

The CHAIRMAN. The Chair is going to recognize Mr. Gore.

Mr. GORE. Thank you, Mr. Chairman.

It seems to me that the oil industry is at a critical juncture just now. They have enormous amounts of retained earnings, and yet are constrained by a variety of factors to increase this money in new exploration and development. There is a limit on the availability of new rigs, on the availability of geologists. There is apparently greater profitability in exploring for oil on the floor of the stock exchange than the Outer Continental Shelf.

And this occurs at a time when the stock market in general, and the stocks of the middle-tier oil companies in particular, are significantly undervalued. Mobil and other large firms are in a position to acquire enormous quantities of proven reserves at bargain prices. This could change the face of the oil industry. If not in the near term, it could change the structure of the industry long into the future.

This is, in my opinion, a particularly disturbing trend. Now I take it that you agree with this, do you not, Professor Adams?

Mr. ADAMS. Yes, I do, Congressman Gore.

Mr. GORE. And I take it that you, Mr. Campbell, and you, Mr. Baxter, do not agree with it.

Mr. CAMPBELL. I think as you expressed it, I do agree with it. Let me try and put it in my own words: That it is of some cause of concern that there might be acquisitions of middle tier companies. Absolutely. We look at every one under the Clayton Act section 7. I do not view that with ease at all.

Mr. GORE. Mr. Baxter.

Mr. BAXTER. I can readily imagine a story of the kind you seem to be telling taking place, and a gradual concentration in holding

of reserves seems to me what you are describing. And that would of course become a serious concern at a point where reserve holdings became concentrated.

Mr. GORE. Well, antitrust law has been preventive in nature more and more in the last several decades. It seems to me by giving an OK to purchase of these reserves, we set up several more to come in the future.

But you do not agree with that?

Mr. BAXTER. I have no confident belief that there will or will not be other acquisitions if this one is or is not approved.

Mr. GORE. Excuse me. Will you say that again?

Mr. BAXTER. I say I have no confident reason to expect that there will or will not be further acquisitions if this acquisition is or is not approved. As they occur, if indeed they do occur, they will be checked against the standards of section 7. With each acquisition, the holding of reserves becomes more concentrated than it was before. At some point there will be an acquisition which may substantially lessen competition in that particular line of commerce, at which point section 7 will prevent its occurrence.

Mr. GORE. Mr. Adams, Professor Adams, could you comment?

Mr. ADAMS. Could you repeat the question, please?

Mr. GORE. Well, one of my concerns is that by allowing the acquisition of these reserves of Marathon's by Mobil, we set off this chain reaction. And Mr. Baxter's response is, well, we will examine each one as it occurs and measure each one against exception of the standard, and not be concerned about the overall trend.

Now I am paraphrasing there. To that extent I may be stretching what you said. But I think that is a fair paraphrase, would you agree with that? Mr. Baxter. And then I will put the question to Mr. Adams.

My concern is the trend. My concern is the chain reaction, the signal that you are sending to the oil industry that comes at this critical juncture when they are cash rich and constrained in their avenues of expenditure, and turning toward a greater concentration, gobbling up the smaller companies in the industry. And the trend, I think, is one that we ought to be concerned about and ought to discourage.

Mr. BAXTER. Well, Mr. Chairman, I guess my comments amounted to saying that as of this piont in time, I see no trend.

Mr. GORE. All right.

Mr. Adams, do you see a trend?

Mr. ADAMS. Yes, I do, and I, if I tried to project the future, I certainly would have the same concern as you, Congressman Gore. I think the thrust of the Celler-Kefauver legislation enacted in 1950 was precisely responsive to your concern; namely, to stem what the Congress considered a rising tide of concentration, to prevent concentration in its incipiency, before it has occurred.

And certainly, some such projected trend as you describe should be a matter of profound concern if we hope for competition to perform the regulatory function that has been assigned to it by our economic policymakers.

Mr. GORE. Well, I certainly agree with your statement there. I certainly disagree with you, Mr. Baxter, that there is no trend. If we just look at the figures that I have led off with and put into the

record of this hearing, and it will be accompanied if the chairman can put this in the record also at the same point, by a specific list of which company among the top 20 oil companies has acquired which takover target. And the trend is apparent from this.

Since 1978 you have seen the money spent for acquisitions and mergers but the top 20 oil companies go from $532 million to $12 billion. And it is a steady increase year by year by year. Why would that not be a trend?

Mr. BAXTER. That is a trend toward asset acquisitions, but so far as I am aware, there has not been any signficant increase in the holdings of proved reserves over that period of time.

Mr. GORE. Well, I think the record will show that may be open to dispute as well, because the number of companies in the energy area acquired by the top 20 oil companies has also increased year by year.

The CHAIRMAN. Will the gentleman yield?

Mr. GORE. I will be glad to yield.

The CHAIRMAN. Mr. Baxter, you said you did not think there has been any change in the relative holdings of reserves. Would you submit us something for the record on that? I would like to see that. I have some doubts on the validity of that statement.

Mr. BAXTER. Yes, Mr. Chairman. I would be happy to.

[The following information was subsequently received for the record:]

U.S. DEPARTMENT OF JUSTICE,
ANTITRUST DIVISION,
OFFICE OF THE ASSISTANT ATTORNEY GENERAL,
Washington, D.C., February 5, 1982.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: During my appearance on December 14, 1981, before your Committee and the House Committee on Energy and Commerce, I was asked to submit for the record information concerning whether there had been a recent trend toward concentration in the relative crude oil reserve holdings of major oil companies. Data currently available to the Department of Justice do not indicate that a trend exists toward concentration among major oil companies of the ownership of world or United States crude oil reserves.

National figures (compiled by the American Petroleum Institute from company annual reports, 10–K filings with the SEC and other sources) reveal that the concentration of United States crude oil reserves among the top 4, 8, 15 and 20 companies holding reserves decreased during the period 1975 to 1980. For example, the share of crude reserves held by the top four firms dropped from 36.3 percent of the national total in 1975 to 35.3 percent of the national total in 1980. The share held by the top eight firms dropped from 55.6 percent in 1975 to 52.7 percent in 1980. Most, but not all, major oil companies registered decreased individual shares of the United States crude oil reserve market during this period as well.[1]

Worldwide figures (developed from company annual reports and other sources) reveal that the concentration of world crude oil reserves among major oil companies for which data were available also decreased during the period 1977 to 1980. Measured as a percentage of the crude oil reserves held by the non-communist, non-OPEC world, the share of crude oil reserves held by the top four firms for which information is available dropped from 20.96 percent in 1977 to 14.34 percent in 1980. A comparison of 1977 and 1980 figures for the top eight firms for which information is available indicates a reduction from 31.27 percent in 1977 to 21.32 percent in 1980 of the non-communist, non-OPEC world crude oil reserve total.[2]

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[1] Sources: Company Annual Reports; American Petroleum Institute, Market Shares and Individual Company Data for U.S. Energy Markets: 1950–1980 (1981).

[2] Sources: Company Annual Reports; Petroleum Outlook; Oil and Gas Journal; International Petroleum Encyclopedia.

I hope this information is responsive to your request and will be helpful to your Committee.

Sincerely yours,

WILLIAM F. BAXTER,
Assistant Attorney General, Antitrust Division.

The CHAIRMAN. In the meantime, the Chair will ask the staff on this committee to make a similar inquiry to see whether we come out in the same place, but I have real doubts. Grave doubts.

Mr. Gore.

Mr. GORE. Well, yes, I have doubts, too. And I take it from your answer that you would be concerned if there was a trend toward the acquisition of reserves by the top 20 oil companies from existing competitors, smaller in size?

Mr. BAXTER. Twenty companies is a very large number. Obviously, there would be a point where the concentration in holdings of reserves became of very serious concern. There would have to be levels of concentration which would give rise to concern in industries such as this. They would involve holdings in the hands of a relatively small number of companies. It is probably not possible to give a complete set of formulas about just when that would occur. But there is no question that a significant concentration in holdings of reserves would be of grave concern.

The CHAIRMAN. You get concentration though with regard to reserves two ways, do you not? One is with reserves the company happens to own on its own, or in concert with somebody else through some kind of a joint venture understanding. Or, in the alternative, you get it by reason of the long-term contracts that that corporation has which gives it access to oil on the world market, either through conventional contracts or through spot market contracts, is that not right?

Mr. BAXTER. Well, spot market contracts are not a problem at all. The long-term contracts can be. One has to take a look at the fraction of reserves which is subject to long-term contracts and just how long-term they are, and the frequency with which they expire and therefore release those reserves.

The CHAIRMAN. So to deal with it, you would have to deal with it on the basis of what they have of their own, which would be their own reserves——

Mr. BAXTER. And what they have under contract.

The CHAIRMAN. And what they would have under contract.

Mr. BAXTER. That is correct.

The CHAIRMAN. I see.

Gentlemen, I must reiterate the concern of the Chair with regard to the matters here. The Chair views the potential loss of a major competitor and the potential loss of the supply for independent nonbranded marketers as being a source of very considerable concern with regard to the U.S. economy. Throwing those independent nonbranded marketers and others in the U.S. industry on the mercy of world market supplies or spot markets I regard as being something enormously worrisome. Let me ask you just one question.

We have talked about takeover of Marathon by Mobil. We have not discussed the takeover of Marathon by United States Steel, fol-

lowed by a takeover of all or part of the stock of United States Steel by Mobil.

And the Chair is curious. Mobil has indicated the purpose of this takeover would be to achieve Marathon's, rather, control over Marathon's reserves. Now, the first question is does this not raise questions regarding monopoly, restraint of trade, and other problems under the antitrust laws?

Mr. Campbell.

Mr. CAMPBELL. Mr. Chairman, we have begun to address exactly that problem. Not that we have any news that Mobil will indeed acquire United States Steel or part of it. But because that is part of the entire analysis we have been focusing on. And I think the answer is, very simply, if Mobil were to take United States Steel in order to take the reserves of Marathon, we would be presented with all the problems we have already identified, plus the possible overlap between Mobil and United States Steel.

The CHAIRMAN. I agree.

Now, what, as regards the second, possible overlap between Marathon, or Mobil and United States Steel, address yourself to that, if you please, Mr. Campbell.

Mr. CAMPBELL. I don't know, but theoretically it could be that Mobil and United States Steel are competitors in relevant markets, and over and above whatever the Yates field, or reserve issue, would present, in which case, even if the Marathon property were not part of the United States Steel property, we would have concerns about Mobil acquiring United States Steel. That is what I meant.

The CHAIRMAN. Mr. Baxter.

Mr. BAXTER. I agree completely with the response Mr. Campbell has given you.

The CHAIRMAN. Mr. Adams, what would be your comments?

Mr. ADAMS. Chairman Dingell, I have made no study of the antitrust implications of a Mobil-United States Steel merger. But certainly to the extent that such a merger or acquisition or partial merger, control of United States Steel by Mobil would give Mobil control over any portion of Marathon's current properties, that would present the same antitrust problems as a direct acquisition of Marathon by Mobil.

The CHAIRMAN. Now, you have another matter in connection with this, and that is that United States Steel is a major holder of coal reserves. It is also fair to observe that Mobil and the oil companies are big in the coal business.

The question then, would the ownership or the potential for takeover of United States Steel's coal reserves by Mobil raise any questions which might be of an antitrust character?

Mr. CAMPBELL. Mr. Chairman, it may very well. First, if Mobil itself holds any coal, there would be a direct horizontal overlap.

Second, from the analysis of a relevant market we would very carefully analyze whether there are areas where coal and petroleum are substitutes. If there are any such or are potentially such, that would give us additional concern.

The CHAIRMAN. Now, Mobil is also a major user of steel and steel products, including pipeline pipe of the kind that is made in Baytown, Tex.

Would this raise any antitrust questions, since United States Steel is, of course, a supplier, including their Baytown, Tex. operation?

Mr. CAMPBELL. It would if there were any evidence of foreclosure from that market. If Mobil had heretofore been purchasing from a number of steel companies and now would only purchase United States Steel product, and the effect was a diminution of competition in the steel market, by all means. That is one thing, again, we will focus on.

The CHAIRMAN. Now, in your consideration of restraint of trade or tendencies toward restraint of trade, would you look at simply the question of behavior, or would you look at the question of potential behavior?

Mr. CAMPBELL. Both case law and the statute is clear in the Clayton Act section 7, that potential behavior is a relevant consideration as well.

The CHAIRMAN. It is relevant. Mr. Baxter.

Mr. BAXTER. Yes, certainly.

The CHAIRMAN. Gentlemen, we have explored the theoretical aspect of this business in considerable detail. What are the resources which are being devoted toward observing the behavior of the different parties in this pattern by, first, the Federal Trade Commission, including the number of personnel, the number of hours, and the amount of money that is being put into your scrutiny of these matters?

Can you tell us, please, sir?

Mr. CAMPBELL. I would feel more comfortable giving that to you in a submission.

The CHAIRMAN. That would be entirely appropriate. If you wanted to rough it out now fine. Otherwise, we will wait.

Mr. CAMPBELL. I would like to do both. In roughing it out, as your staff knows, we have the Office of Petroleum Energy within the Bureau of Competition which has been working on this ever since it was announced.

I would estimate 25 attorneys full time over the last 2 months, and perhaps 5, perhaps as many as 10 economists, just to give you a ball park estimate over the same period.

[The following information was subsequently received for the record:]

FEDERAL TRADE COMMISSION,
BUREAU OF COMPETITION,
Washington, D.C., January 13, 1982.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter will respond to recent questions concerning crude oil reserves held by Amerada Hess Corporation and Federal Trade Commission resources devoted to investigating mergers in the petroleum industry, particularly Mobil Corporation's tender offer for Marathon Oil Company.

According to Amerada Hess' 1980 Annual Report, the company held crude oil reserves of 811.9 million barrels as of December 31, 1980, of which 250.9 million barrels were located within the United States.

With respect to Commission resources devoted to petroleum merger, the Commission's records reflect a total of approximately 3,650 hours (or just over four workyears) devoted to such matters during the period November 1, 1981 through December 15, 1981.

I hope that this information is responsive to your inquiries. If I may be of further assistance, please do not hesitate to let me know.

Sincerely,

THOMAS J. CAMPBELL,
Director, Bureau of Competition.

The CHAIRMAN. Mr. Baxter.

Mr. BAXTER. Well, of course, we took a preliminary look at the Mobil—Marathon proposal at the time the Hart-Scott-Rodino filing was made. We review every such filing. Then a process of allocation occurs between the Department and the Trade Commission. The process involves how busy our sections are, how busy the economists are, theirs and ours.

That process resulted in this transaction being turned over to the Federal Trade Commission for investigation and action. Since that time, we have devoted substantially no resources to this particular transaction, although we do, of course, have an energy section in the Antitrust Division that is continually studying these markets, and we have a number of economists in our Economic Policy Office who are specialists in these markets. So those resources are there, busy on other things now, to be sure, but in reserve for such episodes as this. But we are not involved in this episode.

The CHAIRMAN. Now, if Mobil shifts its course from takeover of Marathon to a takeover of United States Steel, will that trigger, but the Department of Justice and Federal Trade Commission under Hart-Scott-Rodino pre-merger notification requirements?

Mr. CAMPBELL. Yes.

The CHAIRMAN. It will?

Mr. CAMPBELL. Yes, it will, whenever they make——

The CHAIRMAN. Mr. Baxter.

Mr. BAXTER. Yes, surely. Yes, it most certainly would. And once again, we would take a look at the episode and decide which of the agencies should go forward with it.

The CHAIRMAN. I understand such filing has already been made; is that correct?

Mr. BAXTER. We never comment on filings, Mr. Chairman, with regard to pending investigations.

The CHAIRMAN. Never comment with regard to filings and current investigations.

Mr. BAXTER. We never comment on filings which have not been disposed of until they are made public by the parties as a result of our statutory obligation of confidentiality under the Hart-Scott-Rodino Act.

The CHAIRMAN. Well, the committees are interested. We will receive—we will then receive an answer to that in conference. The committees will see to it that your response on that particular point is received for the files of the committees and not for insertion into the public record.

Mr. Campbell.

Mr. CAMPBELL. I would agree, of course, with the Assistant Attorney General.

The only point I would add is that as a practical matter your staff has worked closely with ours and I believe they know the answer.

The CHAIRMAN. I believe they do, too. We will still receive the answer in conference.

What events are triggered, or, rather, what triggers a filing under Hart-Scott-Rodino, and what actions then are taken by your two departments following that?

Mr. BAXTER. The statutory framework sets out the basic set of rules. I believe that the most fundamental trigger is an acquisition by a company with assets in excess of $100 million of another company with assets in excess of $10 million. The statute is worded alternatively, and also refers to sales magnitude of those two levels.

A tender for more than a small investment-type interest is required to be filed, and the companies are then prevented from consummating the merger for a time period. The time period is 30 days—15 days in the event of a cash tender offer.

If during that period of time the agency that has assumed responsibility feels it needs more information, it can issue what is known as a second request for information. The issuance of that second request then extends the time period within which the merger may not be consummated for an additional period which starts to run only after the request for information has been fulfilled. At the termination of the second time period the companies are released from the Hart-Scott-Rodino prohibition against consummation of the merger.

The CHAIRMAN. Unless the agencies have gone to court for an injunction further delaying the consummation; is that correct?

Mr. BAXTER. That is correct, Mr. Chairman. Of course, if the court has acted within that period, why, then, the companies continue to be restrained, this time not by the Hart-Scott-Rodino statute, but by such order as the court may issue.

The CHAIRMAN. Pursuant to the antitrust laws generally.

Mr. BAXTER. Yes. Now, the mere fact that a company escapes, as it were, from the waiting period under the Hart-Scott-Rodino Act in no sense protects the merger. The merger remains open to attack. If we have not satisfied ourselves one way or the other, if we don't feel in good faith we can bring an action when that time period runs, it is quite possible to say to the companies, well, there is no longer any absolute prohibition in your going ahead, but we want you to know that we haven't completed our investigation. We may be around in 3 months or 4 months or 6 months and file a divestiture case against you, and there have been occasions where I have found that the appropriate thing to do.

That is always a possibility. But that is the basic way that the premerger notification program operates. Now, in addition to those barebone statutory requirements, the two agencies in cooperation have promulgated a set of implementing regulations which further amplifies for the companies the information we would like to see, and we receive the filings pursuant to those regulations.

The CHAIRMAN. Mr. Campbell.

Mr. CAMPBELL. That is entirely accurate.

The CHAIRMAN. You do have memorandums of understanding as to which of the agencies proceed under which circumstances under the statute and who would proceed under antitrust laws, particularly section 7, and Hart-Scott-Rodino; is that correct?

Mr. BAXTER. The memorandum of understanding is highly general and ancient. It would more accurately, I think, be described as a process of day-to-day consultation and discussion and allocation on a case-by-case basis with reference to the resources in the agencies that happen to be available at that particular point in time, and the industries with which the different agencies tend to have specialized expertise over the course of time.

The CHAIRMAN. Professor Adams, we have here an interesting question. This will be one of the first, I think, takeovers of a steel company by an oil company.

Will you describe the expertise of an oil company to run a steel company where benefits would be on the stockholders of the steel company, or the United States generally in that kind of undertaking?

Mr. ADAMS. Maybe I am exceedingly traditional, Mr. Chairman. But I have always been taught that there are some advantages to specialization. Jack-of-all-trades, master of none.

It seems to me that a petroleum company has enough major challenges confronting it in the oil and gas business to stick to its field of specialization, rather than presuming to take over the management of an industry such as steel about which it knows nothing.

And I might add that the same applies to the projected takeover by United States Steel of Marathon Oil. It seems to me there is enough work to be done by United States Steel to shape up its operations, to update and modernize its anachronistic backward facilities in the steel business, rather than fiddling with the takeover of an oil company.

The CHAIRMAN. In more logical times I would have been in full concurrence with the last point you made. Of course, I am now in full concurrence with the first.

Gentlemen, we have kept you long enough. Do any of you have anything to say at this time before we release you with the thanks of the committees. Mr. Barré.

Mr. BARRÉ. I have nothing to add, Mr. Chairman.

The CHAIRMAN. Mr. Baxter.

Mr. BAXTER. Thank you, no, Mr. Chairman.

The CHAIRMAN. Mr. Campbell.

Mr. CAMPBELL. Just my thanks to the committees and my expression that your staff has always dealt very courteously with ours. We are very grateful.

The CHAIRMAN. Thank you. Professor Adams.

Mr. ADAMS. Nothing to add except to thank the committees for their courtesy.

The CHAIRMAN. Gentlemen, we thank you all for your courtesy and patience. You have helped us greatly.

The committees stand adjourned until the call of the Chair.

[Whereupon, at 12:14 p.m., the committees were adjourned.]

[The following information was subsequently received for the record:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., November 23, 1981.

Hon. JOHN DINGELL,
Chairman, House Committee on Energy and Commerce,
Rayburn House Office Building, Washington, D.C.

DEAR JOHN: In light of my being unable to appear as an ex officio member of the House Energy and Commerce Subcommittee on Oversight and Investigations, I would respectfully submit my additional views on Mobil's attempted takeover of Marathon Oil Company for inclusion in the record.

Sincerely,

MICHAEL G. OXLEY,
Fourth Ohio District.

Enclosure.

ADDITIONAL VIEWS OF HON. MICHAEL G. OXLEY, U.S. REPRESENTATIVE FROM OHIO

I would again like to thank the distinguished Chairman of the House Energy and Commerce Committee, Mr. Dingell, for holding these timely hearings to consider the antitrust and public policy consequences of a proposed takeover of Marathon Oil Company.

I have a very personal interest in the future of Marathon because it provides the livelihood of most of the employees of my hometown of Findlay, Ohio, where Marathon is headquartered. Every resident from the local paperboy to the Chief Executive Officer of Marathon will be affected by the outcome of a Marathon takeover.

I am encouraged by the U.S. Steel offer to purchase Marathon because it provides the assurance that the jobs of Marathon employees will be preserved. This is in stark contrast to Mobil Corporation's pledge merely to give Marathon Employees a 72-hour notice of termination.

While my primary concern is that of Marathon employees, I am also concerned about the potential antitrust implications of a Marathon takeover by another oil company—Mobil or any other larger oil company.

I would fear the vigorous loss of competition if these two oil companies were allowed to merge. The whole basis of the economic recovery program the Congress has worked so hard on this year is that the key to prosperity lies in the private initiative in a fully competitive market. The direct acquisition of Marathon Oil Company by a larger oil competitor, for example Mobil Corporation, raises serious doubts as to whether or not full competition can be preserved. If competition is significantly curtailed by this type of merge within the oil industry, the consequences will be felt far beyond my home State of Ohio.

Let me mention a few statistics which bear my point. Today Marathon ranks seventeenth in size and Mobil ranks number two. Combined, this Marathon/Mobil company would rank number one in terms of gasoline sales, number two in terms of total sales of refined product, number two in terms of refining capacity, number one in terms of crude oil delivered over U.S. pipelines, and number one in terms of total liquid pipeline mileage in the United States.

Because these two companies compete in all five stages of oil activity—the exploration, production, transportation, refining and marketing—they compete directly with each other and with other large oil companies in a number of related markets. Everybody who has suffered through the oil crises of the seventies must question whether such mergers serve the best interests of the country.

These consequences lead me to believe that such acquisitions violate Section 7 of the Clayton Act. Although I believe those of us who have opposed the Mobil takeover from the beginning have reason for optimism in light of the U.S. Steel offer, I believe we have not yet witnessed the resolution of the problem. Mobil has indicated to me that it will counter-offer and other other oil companies may yet jump into the arena.

In light of Mobil's unconscionable and arrogant attempt to takeover Marathon Oil Company, the Nation could lose one of its most reliable domestic oil companies. If Ohio were to lose Marathon due to a merger with Mobil Corporation, the Midwest could suffer irrreparable losses to the petroleum market and the overall economy.

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